

**187-13-BZ**

**CEQR #13-BSA-161X**

APPLICANT – Sheldon Lobel, P.C., for 1030 Southern Boulevard LLC, owner; 1030 Southern Boulevard Fitness Group, LLC, lessee.

SUBJECT – Application June 21, 2013 – Special Permit (§73-36) to allow the operation of a physical culture establishment (*Planet Fitness*), and Special Permit (§73-52) to extend commercial use into the portion of the lot located within a residential zoning district. C4-4/R7-1 zoning district.

PREMISES AFFECTED – 1024-1030 Southern Boulevard, east side of Southern Boulevard approximately 134' north of the intersection formed by Aldus Street and Southern Boulevard, Block 2743, Lot 6, Borough of Bronx.

**COMMUNITY BOARD #2BX**

**ACTION OF THE BOARD** – Application granted on condition.

**THE VOTE TO GRANT** –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Hinkson and Commissioner Montanez....4  
Absent: Commissioner Ottley-Brown.....1

Negative:.....0

**THE RESOLUTION** –

WHEREAS, the decision of the Bronx Borough Commissioner, dated June 6, 2013, acting on Department of Buildings (“DOB”) Application No. 220259119, reads in pertinent part:

Proposed physical culture establishment, is not permitted as-of-right in a C4-4 zoning district, per ZR 32-10;

Proposed extension of physical culture establishment use into R7-1 portion of zoning lot is not permitted per 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 C4-4 zoning district and partially within an R7-1 zoning district, the legalization of a physical culture establishment (“PCE”) in portions of the first and second floors and mezzanine level of an existing two-story commercial building, contrary to ZR § 32-10, and to permit the legalization of an extension of the proposed PCE use within the existing building into the R7-1 portion of the zoning lot, contrary to ZR § 77-11; and

WHEREAS, a public hearing was held on this application on December 17, 2013, after due notice by publication in *The City Record*, and then to decision on January 14, 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 2, Bronx, recommends approval of this application; and

WHEREAS, the subject site is an irregularly-shaped zoning lot with interior lot and through lot portions and located in the mid-block of the block bounded by Aldus Street, Southern Boulevard, Westchester Avenue, East 165 Street, and Hoe Avenue; and

WHEREAS, the site is partially within a C4-4 zoning district and partially within an R7-1 zoning district; and

WHEREAS, the site has approximately 120 feet of frontage along Southern Boulevard, 20 feet of frontage along Hoe Avenue, and a lot area of 26,300 sq. ft.; and

WHEREAS, the site is occupied by a two-story commercial building that was constructed around 1913 and used as a theater (known as “Lowe’s Boulevard Theater”) until the 1980s, when it was converted to retail use; and

WHEREAS, the PCE occupies portions of the first (10,906 sq. ft. of floor area) and second floors (5,085 sq. ft. of floor area), and second floor mezzanine (1,339 sq. ft. of floor area), for a total PCE floor area of 17,330 sq. ft.; and

WHEREAS, the applicant notes that although the Board has not previously exercised jurisdiction over the site, an application similar to the instant application (a request for special permits under ZR §§ 73-36 and 73-52) was filed by another fitness center operator and withdrawn in October 2012; and

WHEREAS, the applicant notes that the PCE has been in operation since July 15, 2013; and

WHEREAS, the PCE is currently operated as a Planet Fitness; and

WHEREAS, the applicant proposes to: (1) pursuant to ZR § 73-52, extend the use regulations applicable in the C4-4 portion of the site 25 feet to the east and 25 feet to the south, thereby legalizing the PCE use in the portion of the first floor of the existing building within the R7-1 portion of the site; and (2) pursuant to ZR § 73-36, legalize the PCE use in portions of the first and second floors, and second floor mezzanine of an existing two-story 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

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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 continuously from that time onward; and

WHEREAS, as to the 50-percent lot area requirement, the applicant submitted a site plan indicating that approximately 22,005 sq. ft. of the site's 26,300 sq. ft. of lot area (84 percent) is located within a C4-4 zoning district; and

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 R7-1 portion of the site for a permitted use; specifically, the applicant states that the residential portion of the site is already 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 R7-1 district does not have access to a public street; as such, 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 R7-1, 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 commercial and medium-density 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 uses have existed at the site for approximately 100 years; and

WHEREAS, accordingly, the Board finds that the proposed extension of the C4-4 zoning district portion of the lot into the R7-1 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. 13BSA161X, dated June 21, 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 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

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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 C4-4 zoning district and partially within an R7-1 zoning district, the legalization of a physical culture establishment (“PCE”) in portions of the first and second floors and mezzanine level of an existing two-story commercial building, contrary to ZR § 32-10, and to permit the legalization of an extension of the proposed PCE use within the existing building into the R7-1 portion of the zoning lot; *on condition* that all work will substantially conform to drawings filed with this application marked “September 5, 2013” – Five (5) sheets; and *on further condition*:

THAT the term of the PCE grant will expire on July 15, 2023;

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 the bulk parameters of the building will be as follows: 2,443.75 sq. ft. within the R7-1 portion of the lot and 14,886.25 sq. ft. within the C4-4 portion of the lot;

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, January 14, 2014.

**A true copy of resolution adopted by the Board of Standards and Appeals, January 14, 2014.**  
**Printed in Bulletin Nos. 1-3, Vol. 99.**

**Copies Sent**

**To Applicant**

**Fire Com'r.**

**Borough Com'r.**

