

*LAW OFFICE OF JAY GOLDSTEIN, PLLC*

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RECEIVED

JUN - 3 2014

BY COMMUNITY BOARD 8

Community Board No.: 8  
505 Park Avenue, Suite 620  
New York, NY 10022

June 2, 2014


**Re: Special Permit - Physical Culture Establishment**  
**1151 3<sup>rd</sup> Avenue, 2<sup>nd</sup> and 3<sup>rd</sup> Floor**  
**New York, New York**  
**Block 1422, Lot 1**  
**BSA Cal. No.: 119-14-BZ**

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Dear District Manager Pfefferblit:

Enclosed please find a copy of the ***BOARD OF STANDARDS AND APPEALS BZ application and its SUPPORTING DOCUMENTS*** for the above-referenced BSA application. Please call with any questions. Thank You.

Sincerely,

  
Jay Goldstein, Esq.

Encl.:



250 Broadway, 29th Floor  
 New York, NY 10007  
 212-386-0009 - Phone  
 646-500-6271 - Fax  
 www.nyc.gov/bsa

**Board of Standards  
 and Appeals**

**ZONING (BZ) CALENDAR**  
 Application Form

BSA APPLICATION NO. \_\_\_\_\_  
 CEQR NO. \_\_\_\_\_

**Section A**

Applicant/  
 Owner

Law Office of Jay Goldstein, PLLC  
NAME OF APPLICANT  
 356 Fulton Street, Suite 101  
ADDRESS  
 Brooklyn NY 11201  
CITY STATE ZIP  
 646 535-3771  
AREA CODE TELEPHONE  
 646 535-1881  
AREA CODE FAX  
 Jay@jaygoldsteinesq.com  
EMAIL

1151 Third Avenue LLC  
OWNER OF RECORD  
 111 Eighth Avenue, 13th Floor  
ADDRESS  
 New York NY 10011  
CITY STATE ZIP  
 Flywheel Sport Inc.  
LESSEE / CONTRACT VENDEE  
 1151 3rd Avenue, 2nd and 3rd Floor  
ADDRESS  
 New York NY 10065  
CITY STATE ZIP

**Section B**

Site  
 Data

1151 3rd Avenue (201 East 67th Street) 10065  
STREET ADDRESS (INCLUDE ANY A/K/A) ZIP CODE  
 North East corner of 3rd Avenue and East 67th Street  
DESCRIPTION OF PROPERTY BY BOUNDING OR CROSS STREETS  
 1422 1 Manhattan 8 N/A  
BLOCK LOT(S) BOROUGH COMMUNITY DISTRICT LANDMARK/HISTORIC DISTRICT  
 Daniel R. Garodnick C1-9 8c  
CITY COUNCIL MEMBER ZONING DISTRICT ZONING MAP NUMBER  
(include special district, if any)

**Section C**

Dept of Building  
 Decision

BSA AUTHORIZING SECTION(S) 73-36 for  VARIANCE  SPECIAL PERMIT (Including 11-41)  
 Section(s) of the Zoning Resolution to be varied 32-00  
 DOB Decision (Objection/ Denial) date: May 5, 2014 Acting on Application No: 110365453a

**Section D**

Description

(LEGALIZATION  YES  NO  IN PART)  
 Proposed operation of a physical culture establishment on the second and third floor of the premises.

**Section E**

BSA History  
 and  
 Related Actions

If "YES" to any of the below questions, please explain in the STATEMENT OF FACTS YES NO

1. Has the premises been the subject of any previous BSA application(s)? .....    
 PRIOR BSA APPLICATION NO(S): 308-08-BZ

2. Are there any applications concerning the premises pending before any other government agency?....

3. Is the property the subject of any court action?.....

**Section F**

Signature

I HEREBY AFFIRM THAT BASED ON INFORMATION AND BELIEF, THE ABOVE STATEMENTS AND THE STATEMENTS CONTAINED IN THE PAPERS ARE TRUE.

Jay Goldstein SWORN TO ME THIS 2nd DAY OF June 2014  
Signature of Applicant, Corporate Officer or Other Authorized Representative

Jay Goldstein Attorney Abraham Patelsky  
Print Name Title NOTARY PUBLIC

ABRAHAM PATELSKY  
 Notary Public, State of New York  
 No. 01PA6146883  
 Qualified in Kings County  
 Commission Expires May 22, 2015

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May 30, 2014

Honorable Meenakshi Srinivasan, Chair  
Board of Standards & Appeals  
250 Broadway, 29<sup>th</sup> Floor  
New York, NY 10007

**Re: Special Permit - Physical Culture Establishment  
1151 3<sup>rd</sup> Avenue, 2<sup>nd</sup> and 3<sup>rd</sup> Floor  
New York, New York  
Block 1422, Lot 1**

### **STATEMENT OF FACTS AND FINDINGS** **INTRODUCTION**

This application is submitted with the permission of 1151 Third Avenue LLC, the owner of the Premises, and on behalf of the tenant, Flywheel Sports Inc. d/b/a Flywheel (the "Applicant") (see Affidavits of Ownership annexed hereto as Item 3), for a special permit under §73-36 of the New York City Zoning Resolution ("ZR"), to operate the proposed Physical Culture Establishment ("PCE"), on the second and third floors (the "Space") of the building located at 1151 3rd Avenue in Manhattan (the "Premises").

### **DEPARTMENT OF BUILDINGS OBJECTION**

This application is filed pursuant to an objection from the Borough Commissioner of the Department of Buildings dated May 5, 2014 (see DOB Objection annexed hereto as Item 2), pursuant to application number 110365453a, which states:

"Renovation 3, 4, 5<sup>th</sup> to a Physical Culture Establishment and obtain BSA approval. Re-examine fro Dec. 2008.

Proposed work of a "physical culture establishment" at 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup> & 5<sup>th</sup> floors is not permitted as-of-right in zoning C1-9 district and it is contrary to ZR 32-00. Provide BSA approval to comply with ZR 73-36."

## **BOARD HISTORY**

On May 19, 2009, under calendar number 308-08-BZ, the Board granted a special permit to MonQi Fitness, as lessee, to permit the operation of a PCE on the 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> floor of the Premises (the "Grant") (see prior Board resolution annexed hereto as Item 17). The term of the Board's Grant expired on April 1, 2014. MonQi Fitness has recently gone out of business. At this time, the owner of the building seeks to separate the floors and intends to lease each floor independently to three separate PCE operators. Additionally, the owner wishes to convert the second floor to a PCE to be used by the Applicant in conjunction with the 3<sup>rd</sup> floor. As such, the Grant would have to be amended to reflect the new floor and the new operators. Therefore, to simplify the procedure, this office is filing the instant application concurrently with two other PCE applications to reflect the new independent PCEs that wish to operate in the Premises.

## **Current Site Conditions**

The Premises is situated on the northeast corner of East 67<sup>th</sup> Street and Third Avenue; the lot comprises approximately 2,542 square feet, with 25.42 feet of frontage on Third Avenue and 100 feet of frontage on East 67<sup>th</sup> Street (see tax map annexed hereto as Item 9). The subject building is a five-story commercial building that was built in approximately 1910 (see Certificate of Occupancy ("CO") annexed hereto as Item 6). There is one open ECB violation and no open DOB violations for the building (see BIS Screen Profile Item 16). As can be seen from the annexed violation (Item 16), the violation was issued in 2008 for occupying the third floor of the Premises in contravention of the CO. The violating condition was resolved through the Grant, but the prior building owner and operator neglected to update the CO and neglected to cure the violation. This condition will be cured upon approval of the instant application.

## **Zoning**

The Premises is located within a C1-9 Zoning District per Zoning Map 8c (see Zoning Map annexed hereto as Item 7).

The current proposal complies fully with all applicable district regulations (see BSA Zoning Analysis Form and BSA Sign Analysis Form annexed hereto as Item 8).

## **Proposed Facility**

The Applicant will operate the PCE under the trade name of Flywheel. Under the umbrella of the prior Grant, and with the participation of the prior operator, the proposed PCE began offering spin classes on the third floor of the Premises. The instant application seeks to separate the third floor from the PCE operations proposed for the fourth and fifth floor. Additionally, the proposed PCE seeks to incorporate the second floor of the Premises as part of its Space. The proposed PCE will occupy the second floor, which has approximately 1,959 square feet, as well as the third floor that also has approximately 1,959 square feet. As depicted in the plans annexed hereto as Item 13, the second floor of the Space will have four individual shower rooms, two changing rooms,

two bathrooms and one studio room for its Fly Barre program, which will be explained in greater detail below. The third floor of the Space will have a reception area, lockers, two bathrooms and one large group exercise room. The proposed PCE is designed for class use only, as such, patrons are only present immediately before, during and after classes. The classes hosts roughly 20-30 patrons at a time with 3-7 employees present in the Space at all times.

Flywheel offers two types of classes in its facilities. The second floor studio will offer total body classes that focus on light weight training, dance and core strengthening exercises. Using small intense interval exercises choreographed to music. The third floor studio will offer spinning classes. The proposed hours of operation are 5:30am to 9pm seven days a week with an average of 10-15 classes per day. The earliest proposed class will be at 5:45am and the latest class will be at 7:30pm.

The space will be equipped with code compliant sprinklers that will be tied into the buildings NYC DOB approved system. The tenant will be developing evacuation procedure in cases of emergencies and their employees will be trained in those procedures. The Premises will be handicap accessible and conform to the NYC handicap codes.

The following noise attenuation measures are proposed. All partitions at studios are going to be isolated from the adjacent structure. All ceilings at the studio are to be 2-layer gypsum board with green glue supported by vibration isolation ceiling hangers. All penetration at studio ceilings and partitions will be sealed mineral fiber insulation and caulked. The partitions will have an STC rating of 63 and the ceilings will have an STC rating of 62. The exterior walls of the building are constructed out of 12" masonry, further adding to the noise attenuation levels of the Premises.

### **Compliance with ZR § 73-03**

Under Z.R. §73-03, "the Board of Standards and Appeals shall have the power as authorized by Section 73-01, paragraph (a) or (b), and subject to such appropriate conditions and safeguards as the Board shall prescribe, to grant special permits uses... as specifically provided in this Chapter, provided in each case" it shall find the following:

- (a) The Board shall make all of the findings required in the applicable sections of this Chapter with respect to each such special permit use or modification of use, parking or bulk regulations and shall find that, under the conditions and safeguards imposed, the hazards or disadvantages to the community at large of such special permit use or modification of use, parking or bulk regulations at the particular site are outweighed by the advantages to be derived by the community by the grant of such special permit. In each case the Board shall determine that the adverse effect, if any, on the privacy, quiet, light and air in the neighborhood of such special permit use or modification of use, parking or bulk regulations will be minimized by**

**appropriate conditions governing location of the site, design and method of operation.**

The PCE will be managed by Flywheel Sports Inc. and will operate under the trade name of Flywheel. The proposed PCE will occupy the second and third floor of the Premises and will have no adverse impact or potential hazards or disadvantages that will impact on the privacy, quiet, light and air of the neighborhood due to its location and limited size. The building is located in a mixed-use area with offices occupying the remainder of the building (see Radius Diagram and photographs annexed hereto as Item 10 and 11 respectively). Accordingly, the area is already heavily trafficked by office tenants as well as retail customers. This gym does not increase traffic to the surrounding area and therefore, as the Board has previously determined, the PCE will have no negative impact on the adjacent tenants or neighborhood.

- (b) In all cases the Board shall deny a special permit whenever such proposed special permit use or modification of use, parking or bulk regulations will interfere with any public improvement project (including housing, highways, public buildings or facilities, redevelopment or renewal projects, or right-of-way for sewers, transit or other public facilities) which is approved by or pending before the Board of Estimate, Site Selection Board or the City Planning Commission as determined from the calendars of each such agency issued prior to the date of the public hearings before the Board of Standards and Appeals.**

As the facility is located entirely within the existing building, it will not interfere with any public improvement projects.

- (c) When under the applicable findings the Board is required to determine whether the special permit use or modification of use, parking or bulk regulations is appropriately located in relation to the street system, the Board shall in its discretion make such determination on the basis of the Master Plan of Arterial Highways and Major Streets on the official City Map. Whenever the Board is required to make a finding on the location of a proposed special permit use or modification of use, parking or bulk regulations in relation to secondary or local streets and such classification of streets is not shown on the Master Plan, the Board in its discretion shall request the City Planning Commission to establish a report on the appropriate classification of such street.**

Not applicable. The Board is not required to determine whether the special permit use is appropriately located in relation to the street system under ZR §73-36.

- (d) For applications relating to Sections 73-243, 73-48 and 73- 49, the Board in its discretion shall request from the Department of Transportation a report with respect to the anticipated traffic congestion resulting from such special permit use or modification of use, parking or bulk regulations in the**

proposed location. If such a report is requested, the Board shall in its decision or determination give due consideration to such report and further shall have the power to substantiate the appropriate finding solely on the basis of the report of the Department of Transportation with respect to the issue referred.

Not applicable. The application does not relate to §73-243, §73-48 or §73-49.

- (e) If a term of years is specified in the applicable section, the Board shall establish a term of years not to exceed such maximum. For those special permit uses or modification of use parking or bulk regulations for which a maximum term has not been specified, the Board may fix an appropriate term for any such special permit use or modification of use parking or bulk regulations.

A Maximum term of ten years is requested, as is permitted under §73-36.

- (f) On application for renewal of any such special permit authorized in this Chapter, the Board shall determine whether the circumstances warranting the original grant still obtain. In addition, the Board shall ascertain whether the applicant has complied with the conditions and safeguards theretofore described by the Board during the prior term. In the event that the Board shall find the applicant has been in substantial violation thereof, it shall deny the application for renewal.

As this is a new application, this provision does not apply.

- (g) The Board may permit the enlargement or extension of any existing use, which, if new, would be permitted by special permit in the specified districts under the provisions of Section 73-01 and other applicable provisions of this Chapter, provided that before granting any such permit for enlargement or extension within the permitted districts, the Board shall make all of the required findings applicable to the special permit use, except that
- (1) in the case of colleges or universities in R1 or R2 Districts, the Board may waive all such required findings set forth in Section 73-121 (Colleges and universities); and
  - (2) in the case of public utility uses, the Board may waive all such required findings set forth in Sections 73-14 (Public Service Establishments) or 73-16 (Public Transit, Railroad or Electric Utility Substations).

No such enlargement or extension shall create a new noncompliance or increase the existing degree of non-compliance with the applicable bulk regulations, except as may be permitted in accordance with the provisions of Sections 73-62 to 73-68, inclusive, relating to Modification of Bulk Regulations.

Not applicable. This is a new use not an extension or enlargement.

**Compliance with ZR § 73-36**

**(a) In C1-8X, C1-9, C2, C4, C5, C6, C8, M1, M2 or M3 Districts, and in certain special districts as specified in the provisions of such special district, the Board of Standards and Appeals may permit physical culture or health establishments as defined in Section 12-10, including gymnasiums (not permitted under Use Group 9), massage establishments other than adult physical culture establishments, for a term not to exceed ten years, provided the following findings are made:**

**(1) that such use is so located as not to impair the essential character or the future use or development of the surrounding area; and**

The gym is entirely contained within the building and, as such, visibility from the street is extremely limited. The building is located in a mixed-use area with retail space on the first floor, and proposed PCEs to occupy the remainder of the Premises. The surrounding area is comprised of restaurants, bars, office building as well as commercial, retail stores and residence. Therefore the PCE will not attract significant additional traffic to the surrounding area and therefore will not have a negative impact on the adjacent tenants or the neighborhood.

**(2) that such use contains:**

**(i) one or more of the following regulation size sports facilities; handball courts, basketball courts, squash courts, paddleball courts, racketball courts, tennis courts; or**

Not applicable. The gym does not contain any such courts

**(ii) a swimming pool of a minimum 1,500 square feet; or**

Not applicable. The gym does not contain a swimming pool.

**(iii) facilities for classes, instruction and programs for physical improvement, body building, weight reduction, aerobics or martial arts; or**

The gym includes one group exercise room per floor, which will be used for instructional classes as described above.



- (iv) facilities for the practice of massage by New York State licensed masseurs or masseuses. Therapeutic or relaxation services may be provided only as accessory to programmed facilities as described in paragraphs (a)(2)(i) through (a)(2)(iv) of this Section.

Not applicable. The gym does not offer any massage, therapeutic or other relaxation therapy.

- (b) In C4-7, C5-2, C5-3, C5-4, C5-5, C6-4, C6-5, C6-6, C6-7, C6-8 or C6-9 Districts, the Board may permit physical culture or health establishments located on the roof of a commercial building or the commercial portion of a mixed building, provided the following additional findings are made:

- (1) that such use shall be an incidental part of a permitted physical culture or health establishment located within the same commercial or mixed building;
- (2) that such use shall be open and unobstructed to the sky;
- (3) that such use shall be located on a roof not less than 23 feet above curb level;
- (4) that the application for such use shall be made jointly by the owner of the building and the operator of such physical culture or health establishment; and
- (5) that the Board shall prescribe appropriate controls to minimize adverse impacts on the surrounding area, including but not limited to, requirements for the location, size and types of signs, limitations on the manner and/or hours of operation, shielding of floodlights, adequate screening, and the control of undue noise including the amplification of sound, music or voices.

The proposed PCE will be located on the second and third floor of an entirely commercial building in a C1-9 Zoning District, as such, this section does not apply.

- (c) No special permit shall be issued pursuant to this Section unless:

- (1) the Board shall have referred the application to the Department of Investigation for a background check of the owner, operator and all principals having an interest in any application filed under a partnership or corporate name and shall have received a report from the Department of Investigation which the Board shall determine to be satisfactory; and

**(2) the Board, in any resolution granting a special permit, shall have specified how each of the findings required by this Section are made.**


**The Board shall retain the right to revoke the special permit, at any time, if it determines that the nature or manner of operation of the permitted use has been altered from that authorized.**

**The Board may prescribe appropriate conditions and safeguards including location of signs and limitations on the manner and/or hours of operation in order to minimize adverse effects on the character of the surrounding community.**

As has previously been recognized by the Board, the proposed PCE use is an extremely desirable use of the property. Additionally, the proposed PCE will promote the value of the land and will have a positive impact on the City's tax revenue.

It is submitted that the instant application meets the requirements set forth in ZR §73-03 and §73-36. We respectfully request that the Board of Standards and Appeals grant this application or the proposed Physical Culture Establishment at the Premises. The use is consistent with the neighborhood character, creates no adverse impacts, provides needed services, is a benefit to the community and blends nicely into its surroundings.

Respectfully submitted,

  
\_\_\_\_\_  
Jay Goldstein

DEPARTMENT OF BUILDINGS

BOROUGH OF MANHATTAN, THE CITY OF NEW YORK  
 Date September 3, 1974 No. 72508

CERTIFICATE OF OCCUPANCY

NO CHANGES OF USE OR OCCUPANCY NOT CONSISTENT WITH THIS CERTIFICATE SHALL BE MADE, UNLESS FIRST APPROVED BY THE BOROUGH SUPERINTENDENT

This certificate supersedes C. O. No. 49120  
 THIS CERTIFIES that the ~~new~~ altered ~~existing~~ building ~~premises~~ located at  
 201 East 67th Street Block 1422 Lot 1

That the zoning lot and premises above referred to are situated, bounded and described as follows:  
 BEGINNING at a point on the northeast ~~side~~  
 distant East 67th Street and Third Avenue  
 running thence east 100 feet; thence north 25'5" feet;  
 thence west 100 feet; thence south 25'5" feet;  
 running thence \_\_\_\_\_ feet; thence \_\_\_\_\_ feet;

to the point or place of beginning, conforms substantially to the approved plans and specifications, and to the requirements of the Building Code, the Zoning Resolution and all other laws and ordinances, and of the rules of the Board of Standards and Appeals, applicable to a building of its class and kind at the time the permit was issued, and

CERTIFIES FURTHER that, any provisions of Section 646c of the New York Charter have been complied with as certified by a report of the Fire Commissioner to the Borough Superintendent.  
 or Alt. No. 626-73 Construction classification—Class 3 nonfireproof  
 Occupancy classification—Commercial Height 5 stories, 59 feet.  
 Date of completion— August 29, 1974 Located in \_\_\_\_\_ Zoning District.  
 at time of issuance of permit.

This certificate is issued subject to the limitations hereinafter specified and to the following resolutions of the Board of Standards and Appeals: and The City Planning Commission:

PERMISSIBLE USE AND OCCUPANCY

Off-Street Parking Spaces \_\_\_\_\_  
 Off-Street Loading Berths \_\_\_\_\_

STORY	LIVE LOADS Lbs. per Sq. Ft.	PERSONS ACCOMMODATED	USE
Cellar	on ground		Boiler room and storage.
1st	100,70	115	Restaurant and stores, use group 6.
2nd	70	5	Office and showroom, use group 6.
3rd	70	10	Medical laboratory, use group 9.
4th	70	4	Office and showroom, use group 6.
5th	70	4	Office and showroom, use group 6.

NOTE: This is an AMENDED Certificate of Occupancy for change of use on 3rd floor only.

THIS CERTIFICATE WITHIN THE BUREAU OF THE SUPERINTENDENT OF BUILDINGS MUST BE POSTED WITH THE RULES OF THE BUREAU ON OR BEFORE MARCH 31ST, 1967.

Sewage Disposal: \_\_\_\_\_ Discharge Into Either  
 Sainitary Drainage (DOES) (DOES NOT) Sanitary or Combined Sewer  
 Storm Drainage \_\_\_\_\_ Discharge Into Either  
 (DOES) (DOES NOT) Storm or Combined Sewer

*Cornelius F. ...*  
 Borough Superintendent