
SPECIAL PERMIT ZR §73-36: PHYSICAL CULTURE ESTABLISHMENTS

Gyms, health clubs and other facilities that provide instruction, services or activities to improve patrons' physical health through exercise or massage are generally defined as "physical culture or health establishments" (PCEs) that require a special permit from the Board of Standards and Appeals under the Zoning Resolution.

All applications for PCE special permits must be made on the Board's BZ Application Form. Information regarding the filing of a BZ application may be obtained by contacting the Application Desk at (212) 386-0009 or by visiting the Board's website at: www.nyc.gov/bsa.

FILING INSTRUCTIONS

Submit one (1) original and one (1) copy of the completed BZ Application Form and all attachments specified in these instructions to the Board office, 250 Broadway, 29th Floor, New York, NY 10007. An electronic copy (CD or a USB Flash Drive) of the complete application must be provided at the time of filing the application at the Board office.

All filings must be made in person at the Board office, and incomplete applications will not be accepted. The applicant, and not Board staff, is responsible for stamping and clocking all copies of the application at the Board office. The first page of each individual document, and all plans, must be stamped and clocked.

The CD of the digital materials must contain the following:

- The address of the PCE must be written on the CD or on a note taped to the USB Flash Drive.
- The name and ordering of each file on the CD or USB Flash Drive must match the instructions on the following pages ("New Application: Order and Naming of Files on the CD"). If you are providing a document that is not listed on the attached pages, please label accordingly (e.g., "BZ Application Form", "DOB Objection", etc.).
- The CEQR documents (e.g., EAS, Type II checklist, etc.) must be included as an individual file on the CD and not on a separate CD.
- A new application cannot be filed via email. A CD or USB Flash Drive is required.

BZ FORM

The BZ Application Form for a PCE must be fully completed and provide all of the information listed below. This will ensure that the processing of the application is done expeditiously and will not require a project manager to issue unnecessary comments during the review phase.

Section A: Applicant's Representative/Applicant

- Provide the applicant's representative's name, address, phone number and email address.
- Provide the name, address, phone number and email address of the PCE operator (owner of record, operator or lessee).

- If applicable, provide the name, address, phone number and email address of lessee contact person/contract vendee of the premises.

Section B: Site Data

- Provide the address (street and house number).
- Provide the block number and lot number(s), the borough and the community district within which the property is located. If the property is located in the borough of Queens, identify the borough as follows: "Woodside, Queens." If the site is located within the boundaries of two Community Boards, both should be listed. In addition, the applicant should note if the premises are identified by another address (A/K/A).
- Identify the zoning district(s) that the property is located within, and special district, if applicable, with the map section as it appears in the New York City Zoning Resolution. If the building is located within a landmark historic district or is a landmarked site, it must be stated.
- Provide the name(s) the City Council member(s) within whose district the property is located.

Section C: Department of Buildings Decision

Before filing, the applicant must first file an alteration application or new building application, including plans, with the Department of Buildings (DOB). Pursuant to Section 1-05.3 of the Board's Rules of Practice and Procedures, the filing period of an application must be within 30 days from the date of the determination by the Commissioner of Buildings, any Borough Commissioner of the Department of Buildings or authorized representative, or the Commissioner of the Department of Small Business Services or authorized representative. The application will not be accepted by the Board office without the proper determination ("objection"). Section C of the BZ Application Form must contain the following:

- The section(s) of the Zoning Resolution sought to be varied (e.g., ZR §§ 32-10 or 42-10)
- The date of the DOB denial, the new building number (NB #), alteration application number (Alt. #) or building notice number (BN #) under which the plans were originally filed at the Department of Buildings or Department of Business Services.

Section D: Project Description

- Provide a brief description of the application. An example of a project description is:

Special Permit (§73-36) to permit the operation of a proposed Physical Culture Establishment (ABC Health Club) within the cellar level, first and second floors of a mixed-use retail and office building contrary to ZR §32-10. C4-3 (XYZ Special Purpose District) (XYZ Historical District).

or

Special Permit (§73-36) to legalize the operation of an existing Physical Culture Establishment (ABC Health Club) within the cellar level, first and second floors of a mixed-use retail and office building contrary to ZR §32-10. C4-3 (XYZ Special Purpose District) (XYZ Historical District).

Section E: Signature

- The BZ Application Form must be signed by the applicant, corporate officer or other authorized representative affirming that all statements contained within the application form and attached materials are true. The application form must also be notarized by a notary public, pursuant to all applicable notary laws.

ATTACHMENTS TO BZ APPLICATION FORM

All of the items listed below must be submitted at the time of filing, or the application will not be accepted. Please note that failure to provide the materials correctly will unnecessarily delay the review of the application.

NYC DEPARTMENT OF BUILDINGS OBJECTION

Attach a copy of the DOB objection, stamped with the denial from the Commissioner, Borough Commissioner or authorized representative. The section(s) of the Zoning Resolution sought to be varied for a physical culture establishment include ZR §§ 32-10 or 42-10. The date of the denial stamped on the face of the objection must be no more than 30 days prior to the date the application is filed with the Board; otherwise, the application will not be accepted.

AFFIDAVIT OF OWNER AND/OR LESSEE

The Board's Affidavit of Ownership or Lessee Form must be completed, signed and notarized. If the property is part of a larger zoning lot, the declaration of zoning lot restrictions and certification of parties-in-interest must be attached. *ZR § 73-36(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 zoning districts, if any portion of the subject PCE is located on the roof of a commercial building or the commercial portion of a mixed building, the application must be made jointly by the owner of the building and the operator of the PCE. A separate affidavit of lessee and/or owner must be filed.

STATEMENT OF FACTS AND FINDINGS

The Statement of Facts and Findings discusses the principal points of the application. For applications pursuant to ZR § 73-36, the information provided must include, but is not limited to, responses to the following inquiries:

- What is the name of the Physical Culture or Health Establishment (PCE)?
 - What is the operating name of the establishment if different?
- Is any portion of the PCE proposed to be in a portion of the building or within a portion of the zoning lot that would not permit a PCE use pursuant to ZR §73-36?

Please note that if the answer is YES, the Board of Standards and Appeals will not have the authority to approve the use of Physical Culture Establishment within districts not cited within § 73-36 of the Zoning Resolution and the application must NOT BE FILED.
- Will the proposed or does the operating PCE conform to and comply with all the applicable district regulations for bulk, supplementary use regulations, regulations applying along district boundaries, accessory signs, accessory off-street parking and off-street loading, and all other applicable provisions of the Zoning Resolution?

If the answer is NO, the application must NOT BE FILED until all the above-mentioned requirements have been met to the satisfaction of the New York City Department of Buildings and in compliance with all applicable provisions of the New York City Zoning Resolution.
- Is the proposed PCE within a new building or existing building (provide BIN #)?
- Is this application a proposal or legalization?

- If the application is to legalize, when did this PCE begin operating?
- What is the total existing/proposed gross square footage of the PCE? Please state by level/floor.
- Will there be separate ingress/egress for PCE patrons dedicated to the PCE? If so, is such ingress/egress accessible to people with disabilities?
 - Provide floor plans for all PCE floors including a ground floor plan showing access from and egress onto the street.**
- Are all areas in the PCE ADA-accessible?
 - Provide drawings showing accessibility.**
 - If the PCE is not fully ADA-accessible, please explain.
- What are the other uses within the existing/proposed building?
 - Provide a Certificate of Occupancy for the subject building.**
- If applicable, where are any residential uses within the building or within adjoining buildings?
 - Provide a neighborhood map showing residential uses.**
- Is the subject site an individual landmark or located in a historic district?
 - If either answer is "YES," provide a Landmarks Preservation Commission Certificate of Appropriateness, Certificate of No Effect, or other LPC approval.**
- What types of services and/or activities are/will be provided at this establishment?
- What are the daily existing/proposed hours of operation?
 - Please specify peak times and number of patrons and employees.**
- Are massage services proposed/existing at this establishment?
 - If the application is for a legalization and massage services are being provided, provide copies of valid New York State registration certificates for each licensed professional providing massage services.**
- What is the proposed occupancy load of the PCE?
- Is/will a Place of Assembly (PA) Certificate of Operation be required?
 - As a matter of public safety, New York City requires a Place of Assembly (PA) Certificate of Operation for all premises where the Certificate of Occupancy indicates that 75 or more persons may gather.**
 - For legalizations, provide copies of the DOB application for a PA Certificate of Operation.**
- What, if any, Fire Alarm (FA) or Sprinkler (SP) protections are existing/proposed in the subject building? What, if any, Fire Alarm (FA) and/or Sprinkler (SP) protections are existing or proposed in the subject PCE space?
 - If the PCE space includes/will include fire protection measures, provide copies of sprinkler and/or fire alarm plans, sign-offs and inspection reports for FDNY review.**
- Does the PCE space include/require noise/sound/vibration attenuation measures?
 - If yes, please provide attenuation detail drawings with details keyed to plans.
 - If no, please explain.
- Describe how the proposed PCE meets the Findings of the ZR §§ 73-03 and 73-36. Provide exhibits as necessary to support the application.
- ZR § 73-03(a): The Board shall make all of the findings required in the applicable sections of this Chapter with respect to this special permit use and shall find that, under the conditions and safeguards imposed, the hazards or disadvantages

to the community at large of such special permit use at this 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 this special permit use regulations will be minimized by appropriate conditions governing location of the site, design and method of operation.

Explain how the subject application will not have an adverse effect on the privacy, quiet, light and air in the neighborhood.

- ZR § 73-03(b): In all cases the Board shall deny a special permit whenever such proposed use special permit 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, 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.

Explain how the subject application will not interfere with any public improvement project(s)

- Address the findings of § 73-36(a):
 - Is the subject site located within C1-8X, C1-9, C2, C4, C5, C6, C8, M1, M2 or M3 Districts?
 - Explain how the existing/proposed PCE is so located as not to impair the essential character or the future use of development of the surrounding area.
 - The existing/proposed PCE contains: (i) one or more of the following regulation size sports facilities: handball courts, basketball courts, squash courts, paddleball courts, racquetball courts, tennis courts; or (ii) a swimming pool of a minimum 1,500 square feet; or (iii) facilities for classes, instruction and programs for physical improvement, body building, weight reduction, aerobics or martial arts; or (iv) facilities for the practice of massage by New York State licensed masseurs or masseuses.

Please note that therapeutic or relaxation services may be provided only as accessory to programmed facilities as described in ZR §§ 73-36(a)(2)(i)-(iv).

- If the application is filed pursuant to ZR § 73-36(b) address the following requirements:
 - Is any portion of the PCE located on the roof of a commercial building or the commercial portion of a mixed building?
 - Is the subject PCE located in a C4-7, C5-2, C5-3, C5-4, C5-5, C6-4, C6-5, C6-6, C6-7, C6-8 or C6-9 Zoning District?
 - Is such use an incidental part of a permitted physical culture or health establishment located within the same commercial or mixed building?
 - Is such use open and unobstructed to the sky?
 - What, if any, measures are proposed/existing to minimize adverse impacts on the surrounding area, including but not limited to 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:
 - Is the application made jointly by the owner of the building and the operator of the PCE?

CERTIFICATE OF OCCUPANCY

Attach a copy of the current Certificate of Occupancy, if issued. Where relevant, previously issued Certificates of Occupancy should be included.

ZONING MAP

Clearly identify the subject site on a copy of the NYC Zoning Map.

DEPARTMENT OF FINANCE TAX MAP

Provide a copy of the subject tax map from the NYC Department of Finance.

PHOTOGRAPHS

Submit a set of 8 ½" x 11" color photographs of the subject site including photos of the interior if the request is for a legalization. Attach an 8 ½" x 11" sketch to each set of photographs and identify the point at which each photograph was taken. Show compass points and indicate the point at which each photograph was taken by means of a number, corresponding to the photograph, within a circle and an arrow showing the direction in which the camera faced when each photograph was taken.

PROPOSED PLANS

All drawings submitted shall be properly titled, numbered, dimensioned, dated, drawn to scale and comply with the following directions and must bear a legible seal and signature of a registered architect or licensed professional engineer.

- All drawings must be legible and 11x17 inches in size.
- All building heights (elevations) shall be shown in NAVD 88, where shown.
- Façade elevations indicating doors providing access to and egress from the PCE must be shown.
- For proposed PCEs, no existing plans are required. Only a set of proposed conditions plans are required. If the application is for a legalization, the plans must be labeled "Existing/Proposed."
- All drawings must comply with the following Board's standard notes instructions. Please note, however, that during the course of examination or public hearing, the Board may require that additional notes or information not listed below be placed on drawings. For fire safety notes, FDNY reserves the right to require modifications as they see appropriate.

The following notes and/or information are required for Physical Culture Establishments:

All Buildings/Uses:

For all levels/floors of the PCE, including those dedicated only to the PCE entrance, show complete interior layouts with exit corridors and stairs (as necessary) with the following notes on each floor plan:

- Cross hatching or shading must be provided to identify portions of the building not subject to the proposed BSA application. The areas must be labeled "**Not part of BSA application.**"
- "All work and site conditions shall substantially conform to drawings filed at BSA."
- "All partitions and exits shall be as approved by DOB."

- “DOB shall ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of the plan(s)/configuration(s) not related to the relief granted.”
- “Maximum occupant load per floor and per space shall be as approved by DOB.”

In addition to the above notes, plans for PCEs should reflect the following information/notes:

- “Minimum 3’-0” wide exit pathways shall be provided leading to the required exits. Pathways shall always be maintained unobstructed, including from any gymnasium equipment.”

Clearly identify on the plans the 3’-0” wide pathway.

- “Accessibility shall be provided pursuant to the standards set forth in applicable accessibility laws, including but not limited to, Chapter 11 of the NYC Building Code, the 2009 American National Standards Institute (ANSI) A117.1 and Title III of the Americans with Disabilities Act.”
- “Proposed signage will comply with applicable Zoning Regulations and shall be as approved by DOB.”

Identify location and type of equipment on the floor plans.

If the PCE has noise and/or vibration producing equipment or instruction techniques, including but not limited to, bicycles, rowing machines, treadmills, heavy bags, free weights, and medicine balls, provide sound attenuation details and key them to the plans.

FDNY Compliance (Please choose the appropriate note based on building conditions):

If the occupancy load of the PCE is **below grade**, a determination will be made by the Fire Department of the City of New York for requirements of a fire alarm and sprinkler system.

If the occupancy load of the PCE is less than 300 persons -

- And the building has a fire alarm system:
 - Note: “The subject building is equipped with an approved fire alarm system (Application No. _____), accordingly, a fire alarm system shall be provided in the PCE space as required by 2014 BC Section 901.6.2 and the New York City Fire Code and shall be monitored by a central supervising station in accordance with Fire Code Section 907.14.”
- And the building has a sprinkler system:
 - Note: “The subject building is fully sprinklered (Application No. _____), accordingly, the sprinkler system shall be extended into the PCE space, or, if a sprinkler system is already installed in the PCE space, such sprinkler shall be maintained (i.e. reconfigured for PCE occupancy) and comply with the applicable construction code.”
- And the building does NOT have a fire alarm system and/or sprinkler system:
 - [No requirement for the installation of a fire alarm and/or sprinkler system.]

If the occupancy load of the PCE is 300 persons or more:

- And the building has a fire alarm:
 - Note: “The subject building is equipped with an approved fire alarm system (Application No. _____), accordingly, a fire alarm system shall be provided in the PCE space as required by 2014 BC Section 901.6.2 and the New York City Fire Code and shall be monitored by a central supervising station in accordance with Fire Code Section 907.14.”

- And the building does NOT have a fire alarm:
 - [No requirement for the installation of a fire alarm.]
 - And the building has a sprinkler system:
 - Note: “The subject building is fully sprinklered (Application No. _____), accordingly, the sprinkler system shall be extended into the PCE space, or, if a sprinkler system is already installed in the PCE space, such sprinkler shall be maintained (i.e. reconfigured for PCE occupancy) and comply with the applicable construction code.”
 - And the building does NOT have a sprinkler:
 - Note: “The PCE space shall be fully sprinklered.”
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RADIUS DIAGRAM/LAND USE MAP

Provide a radius diagram (drawn to a scale of 100 feet to 1 inch on sheets not to exceed 11" by 17" in size) that clearly shows the following:

- Provide a color land use map for all properties located within a 400-foot radius measured from the center of the subject lot. If the site is greater than 40,000 square feet or has greater than a 300-foot frontage, a 200-foot radius from each corner of the site must be used.

Use the following colors for land use:

- Yellow for one- and two-family dwellings
- Orange for multiple dwellings
- Red for commercial
- Brown for mixed residential/commercial
- Purple for manufacturing
- Green for open space/park land
- Blue for institutional/community facility
- Dark grey for parking/automobile/utility
- Light grey for vacant/open lot

Further identify the number of building stories and land use of all properties as follows:

III	Story Height
MD	Multiple Dwelling
D	Dwelling
R	Retail
G	Garage
C	Commercial
I	Industrial
M	Manufacturing
W	Warehouse
A	Auto

- All block numbers must be printed within a rectangle:
- All lot numbers must be printed within a circle:
- Identify the frontage, depth and width of all lots within the building line;
- Identify all house numbers outside of the building line, street names, and street widths (property line to property line);
- Identify the zoning districts and boundaries;
- Provide compass points;

LIST OF AFFECTED PROPERTY OWNERS & TENANTS

Identify the names and addresses of the owners of record of all property shown on the 200'-0" radius diagram/land use map (see below), listing each owner by block and lot. The list must include all residential, commercial and industrial tenants of record of the property which is the subject of this application. Names and addresses of owners must be obtained from the City Register. The list of affected property owners (and tenants, if applicable) must include the source and date of the list and be notarized. In all cases, the list provided must show the names of the actual property owners with legal title, rather than mortgagees.

If the property that is the subject of the application is 40,000 square feet or larger or contains a frontage greater than 300'-0" on any one street, then affected property owner information is required for properties within a 200'-0" radius of a line running parallel to the subject property. The affected property owner information is required for properties within a 200'-0" radius of the center of the subject property.

MESSAGE SERVICES

If the application is for a legalization of an existing PCE and massage services are being provided, provide copies of valid New York State registration certificate for each licensed professional providing massage services. New York State massage therapists must display a current New York State registration certificate; this certificate lists the professional's name, address, and dates of the registration period. Please note that massage therapists must reregister every three (3) years to practice in New York State.

LANDMARKS

If the subject site is located within or contiguous to an individual landmark or is located within a historic district provide a Landmarks Preservation Commission (“LPC”) Certificate of Appropriateness, Certificate of No Effect, or other LPC approval.

DEPARTMENT OF INVESTIGATIONS (DOI) REVIEW

ZR § 73-36(c) requires that the Board refer all PCE applications to DOI for a background check of the owner, operator and all principals having an interest in any application filed under a partnership or corporate name.

ENVIRONMENTAL REVIEW

Applications for PCEs that are less than 20,000 gross square feet in total are not subject to review under the City Environmental Quality Review, the State Environmental Quality Review Act (Environmental Conservation Law, Article 8) or the SEQRA Regulations and may file as a Type II action.

If the PCE is larger than 20,000 gross square feet, the following is required:

1. Short or Long Form EAS - Long Form for Type I actions or Short Form for Unlisted actions
2. Graphics as listed in EAS checklist
3. A detailed narrative of existing, no-action, and with action conditions for land use, zoning, and public policy. Include a description of the increment between No Action and With Action scenarios. If site is in the Waterfront Revitalization Program boundaries, include a public policy discussion regarding each item on the required Consistency Assessment Form.
4. Analyses for each “Yes” response in Part II of the EAS. Guidance on preliminary and detailed analyses parameters are found in the CEQR Technical Manual.
5. Other forms:
 - a. Consistency Assessment Form and flood worksheet (subject policy 6.2) for sites in WRP boundaries
 - b. Jamaica Bay Watershed Form – for sites in Jamaica Bay Watershed