

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment



Application No. 18105 of Primal Fitness, Inc., pursuant to 11 DCMR § 3103.2, for a variance from the use provisions to operate a fitness center under subsection 330.5, in the R-4 District at premises 219 M Street, N.W. (Square 555, Lot 805).

HEARING DATES: September 28, 2010 and October 26, 2010
DECISION DATE: November 2, 2010

SUMMARY ORDER

SELF CERTIFIED

The zoning relief requested in this case was self-certified, pursuant to 11 DCMR § 3113.2. (Exhibit 5).

The Board provided proper and timely notice of the public hearing on this application by publication in the *D.C. Register* and by mail to Advisory Neighborhood Commission (“ANC”) 6C and to owners of property within 200 feet of the site. The site of this application is located within the jurisdiction of ANC 6C, which is automatically a party to this application. The ANC submitted a report, dated September 13, 2010 and received into the record on September 15, 2010, indicating that at a duly noticed, regularly scheduled monthly meeting at which a quorum was present, the ANC voted to support the application by a vote of 5:3:0. The ANC conditioned their support, requesting that the Applicant be required: 1) to eliminate weight-dropping vibrations that emanate from the establishment; and 2) to guarantee the structural integrity of the adjacent structures which are old and over time will suffer from these vibrations. (Exhibit 21). Mr. Rob Amos was the authorized ANC spokesperson who testified on behalf of the ANC. (Exhibit 36).

The Office of Planning (“OP”) submitted a timely report indicating that it supported the application to continue the fitness center use within the existing building. OP noted that there were some issues that the Applicant should address further at the hearing, notably those issues pertaining to neighbors’ concerns regarding vibrations attributed to weight dropping and how the Applicant was handling its compliance with the conditions in the 2008 Order. (Exhibit 29).

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Twenty-one letters of support were submitted for the record by Terence McPartland, 221 M Street, N.W., the Applicant's neighbor and whose residence shares a wall with the Applicant; Chris Richards, 5005 Sherier Place, N.W.; Anil Ramcharan; Geoff Embler, 350 9th Street, S.E.; Maj. Judith K. Boyd, D.C. resident and client of the Applicant; Mike Choi, customer of the Applicant; Jesse Hughes, client of the Applicant; Roseanne Lazer, 1186 5th Street, N.E.; Jennifer Erickson, D.C. resident and client of the Applicant; Jason L. Garneau, Captain, U.S. Army, client of the Applicant; Vito Lupo, D.C. resident and client of the Applicant; Alice Chmil; BJ Monger; Jessica Roberts, 76 R Street, N.W.; Peter Silberman; Ken Rub, D.C. resident and client of the Applicant; Mark F. Magazu, II, D.C. resident and client of the Applicant; Samuel Slater, client of the Applicant; Hudson Hollister, neighbor and client of the Applicant; Si Kailian, who resides at 1108 5th Street, N.W., and owns 1227 4th Street, N.W.; Josh Lasky, 1811 Ingleside Terrace, N.W. (Exhibit 35). In addition, a petition in support of the application, signed by 28 D.C. residents, was submitted for the record. (Exhibits 33 and 34). Also, a letter of support was submitted by Paul DelGrosso, whose residence abuts the Applicant's property "via our shared alley." (Exhibit 30).

A letter in opposition to the application was submitted by Gene Cope, who also authorized Brenda Keys to speak on his behalf. (Exhibit 31). Seven additional letters of opposition were submitted to the record by Brenda Keys, 215 New York Avenue, N.W., (Exhibit 28); Vincent Teal, 1228 Kirby Street, N.W., (Exhibit 27); Richard Teal, 1228 Kirby Street, N.W., (Exhibit 26); Wallace Edmonds, 117 New York Avenue, N.W., (Exhibit 25); George S.L. Green-Williams, 1223 New Jersey Avenue, N.W., (Exhibit 24); Valeria Ruffin; and Raymond A. Stroud, Northwest Church Family Network, (Exhibit 23). Testimony both in support and in opposition was given at the hearing.

As directed by 11 DCMR § 3119.2, the Board has required the Applicant to satisfy the burden of proving the elements that are necessary to establish the case pursuant to § 3103.2, for a variance from the use provisions to operate a fitness center under § 330.5, in the R-4 District. Based upon the record before the Board and having given great weight to the ANC and OP reports filed in this case, the Board concludes that the applicant has met the burden of proving under 11 DCMR §§ 3103.2 and 330.5, that there exists an exceptional or extraordinary situation or condition related to the property that creates an undue hardship for the owner in complying with the Zoning Regulations, and that the relief can be granted without substantial detriment to the public good and without substantially impairing the intent, purpose, and integrity of the zone plan as embodied in the Zoning Regulations and Map. No parties appeared at the public hearing in opposition to the application. Accordingly, a decision by the Board to grant this application would not be adverse to any party.

Pursuant to 11 DCMR § 3100.5, the Board has determined to waive the requirement of 11 DCMR § 3125.3, that the order of the Board be accompanied by findings of fact and conclusions of law. It is therefore **ORDERED** that this application be **GRANTED AS CONDITIONED**:

1. This approval shall be for a term of **FIVE (5) YEARS**, beginning on the date upon which the order became final.
2. Weights or any object weighing over 95 pounds may be dropped only in the rear room of the first floor of the firehouse building.
3. The Applicant shall install floor mats and padding to minimize vibration and noise.
4. Group runs through the neighborhood on public space, including sidewalks, shall be limited to eight persons or fewer.
5. The Applicant's protocol for its membership shall be posted in the building and on the gym's web site to include the policy that all members shall be respectful and courteous to pedestrians on the sidewalks at all times, and especially during group exercise runs.

VOTE: **3-0-2** (Meridith H. Moldenhauer, Jeffrey L. Hinkle, and Michael G. Turnbull to APPROVE. Nicole C. Sorg and the third Mayoral appointee (vacant) not present, nor voting.)

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT

The majority of the Board members approved the issuance of this order.

ATTESTED BY:


JAMISON L. WEINBAUM

Director, Office of Zoning

FINAL DATE OF ORDER:

NOV 09 2010

PURSUANT TO 11 DCMR § 3125.9, NO ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN (10) DAYS AFTER IT BECOMES FINAL PURSUANT TO § 3125.6.

PURSUANT TO 11 DCMR § 3130, THIS ORDER SHALL NOT BE VALID FOR MORE THAN SIX MONTHS AFTER IT BECOMES EFFECTIVE UNLESS THE USE APPROVED IN THIS ORDER IS ESTABLISHED WITHIN SUCH SIX-MONTH PERIOD.

PURSUANT TO 11 DCMR § 3205, FAILURE TO ABIDE BY THE CONDITIONS IN THIS ORDER, IN WHOLE OR IN PART, SHALL BE GROUNDS FOR THE REVOCATION OF ANY BUILDING PERMIT OR CERTIFICATE OF OCCUPANCY ISSUED PURSUANT TO THIS ORDER.

IN ACCORDANCE WITH THE D.C. HUMAN RIGHTS ACT OF 1977, AS AMENDED, D.C. OFFICIAL CODE §§ 2-1401.01 ET SEQ. (ACT), THE DISTRICT OF COLUMBIA DOES

NOT DISCRIMINATE ON THE BASIS OF ACTUAL OR PERCEIVED: RACE, COLOR, RELIGION, NATIONAL ORIGIN, SEX, AGE, MARITAL STATUS, PERSONAL APPEARANCE, SEXUAL ORIENTATION, GENDER IDENTITY OR EXPRESSION, FAMILIAL STATUS, FAMILY RESPONSIBILITIES, MATRICULATION, POLITICAL AFFILIATION, GENETIC INFORMATION, DISABILITY, SOURCE OF INCOME, OR PLACE OF RESIDENCE OR BUSINESS. SEXUAL HARASSMENT IS A FORM OF SEX DISCRIMINATION WHICH IS PROHIBITED BY THE ACT. IN ADDITION, HARASSMENT BASED ON ANY OF THE ABOVE PROTECTED CATEGORIES IS PROHIBITED BY THE ACT. DISCRIMINATION IN VIOLATION OF THE ACT WILL NOT BE TOLERATED. VIOLATORS WILL BE SUBJECT TO DISCIPLINARY ACTION.

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As Director of the Office of Zoning, I hereby certify and attest that on NOV 09 2010, a copy of the order entered on that date in this matter was mailed first class, postage prepaid or delivered via inter-agency mail, to each party and public agency who appeared and participated in the public hearing concerning the matter, and who is listed below:

William DC Valentine and Raymond J. Valentine
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Mark Toorock
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ATTESTED BY:

A handwritten signature in dark ink, appearing to read "Jamison L. Weinbaum", written over a horizontal line.

JAMISON L. WEINBAUM

Director, Office of Zoning