



IN CITY COUNCIL

Marlborough, Mass., SEPTEMBER 24, 2018

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ORDERED:

DECISION ON A SPECIAL PERMIT CITY COUNCIL ORDER NO. 18-1007339B

The City Council of the City of Marlborough hereby GRANTS the application for a Special Permit to Ninja Twins, LLC (hereinafter "Applicant Tenant"), as provided in this Decision and subject to the following Findings of Facts and Conditions:

FINDINGS OF FACTS AND CONDITIONS

1. The landlord is Ivy Brigham Property, LLC, a duly organized and existing Limited Liability Company established under the laws of the state of Delaware with its principal place of business located at 102 Chestnut Ridge Road, Ste. 204, Montvale, NJ 07645.

2. Applicant Tenant is a duly organized and existing Massachusetts Limited Liability Company with its principal place of business at 121 Lee Drive, Concord, MA 01742 and has duly filed its Certificate of Organization Limited Liability Company with the City Clerk of the City of Marlborough to operate its business at the subject location. Applicant Tenant is a franchisee of USA Ninja Challenge.

3. The landlord is the title owner of the property located at 19 Brigham Street (the "Site"). The landlord and Applicant Tenant have executed or will execute a lease regarding Unit 8 at the Site, and its use pursuant to the terms of this special permit regarding Unit 8 at the Site.

4. The Applicant Tenant seeks permission to utilize Unit 8 at the Site as a commercial indoor recreation center and place of fitness training for children ages 4 to 17. The Site is located in the Industrial zoning district. A recreation center is allowed in the Industrial zoning district by special permit.

5. The Applicant Tenant, on July 10, 2018, filed with the City Clerk of the City of Marlborough, an Application for a Special Permit under the provisions of § 650-17 and pursuant to the procedures specified in § 650-59 of the Marlborough Zoning Ordinance (the "Application").

6. The Site contains an existing commercial building. Unit 8 is shown in that building on plans submitted with or subsequent to the Application, the first said plan entitled "19 Brigham Street Unit #8" and the second plan being a sketch floor plan entitled "Unit No. 8 Plan" (collectively, the "Plans"), all of which Plans are attached hereto. No modifications are proposed to the exterior of the building, minor structural modifications are proposed to the interior of the building, and no parking areas will be created or modified.



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7. The Applicant Tenant seeks a special permit allowing the establishment of an indoor recreation area that will include various children's exercise and fitness equipment / obstacles for training classes, birthday parties, and camps for children to work on physical fitness, coordination, and confidence.

8. The Plans have been certified by the Building Commissioner, acting on behalf of the City Planner, as having complied with Rule 7 of the Rules and Regulations promulgated by the City Council for the issuance of a special permit.

9. Pursuant to the Rules and Regulations of the City Council and the provisions of M.G.L. c. 40A, the City Council established a date for public hearing for the Application and the City Clerk caused to be advertised said date in the MetroWest Daily News and sent written notice of said hearing to those abutters entitled to notice under law.

10. The Marlborough City Council pursuant to M.G.L. c. 40A held a public hearing on September 10, 2018, concerning the Application. The hearing was opened and closed at that meeting.

11. The Applicant Tenant presented evidence at the public hearing detailing the proposed use and its projected limited impact upon City services, the neighborhood and traffic.

12. At the public hearing, Richard Knight, representing Paul Scalzi who will be managing the operation of the business and is the manager of Applicant Tenant, described the proposed business as being one that would provide an indoor venue for children's fitness to take advantage of the proposed indoor fitness facility. He indicated that the business would operate late afternoon into the early evening, and weekends, following an established training class format to ensure development and safety for children 4-17 years of age. In response to questions from city councilors, he indicated that:

- a) all employees receive background screening conducted by service provider;
- b) no food would be prepared on the premises;
- c) the facility would be open to the general public to provide indoor training space for children on a daily basis; and
- d) all recreation would occur indoors.

13. No member of the public spoke, either in favor of or in opposition to the proposal.

14. Following the public hearing, the Urban Affairs Committee held a meeting on September 18, 2018 during which this Application was discussed. At that meeting, the parties discussed various issues and proposed permit conditions to deal with them.



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REASONS FOR APPROVAL OF APPLICATION FOR SPECIAL PERMIT

A. The City Council finds that the Applicant Tenant has complied with all Rules and Regulations promulgated by the Marlborough City Council for an application as they pertain to the Special Permit.

B. The use of Unit 8 for an indoor recreation establishment and place of fitness training is an appropriate use of the Unit 8-portion of the Site and is in harmony with the general purpose and intent of the Zoning Ordinance of the City of Marlborough, subject to appropriate terms and conditions provided for herein. The use sought and its impacts and characteristics are not in conflict with the public health, safety, convenience and welfare, provided the safeguards and limitations imposed herein are met.

C. The City Council, pursuant to its authority under M.G.L. c. 40A, § 9 and Chapter 650 of the Marlborough City Code, GRANTS the Applicant Tenant, its successors and assigns, a Special Permit to operate an indoor recreation establishment and place of fitness training as per plans filed with the City Council and the City Clerk, SUBJECT TO THE FOLLOWING CONDITIONS, which shall be applicable to Applicant Tenant and its successors and assigns, and a violation of which shall be a violation of this Special Permit:

1. Signage: Any signage installed or erected on the Site shall meet the requirements of the Sign Ordinance of the City of Marlborough, without variance.

2. Compliance with Local, State and Federal Laws: The Applicant Tenant agrees to comply with all rules, regulations and ordinances from the City of Marlborough, the Commonwealth of Massachusetts, and Federal Government as they may apply to the construction, maintenance of equipment, and operation of the facility, and to public peace and good order in the event that the Chief of Police determines that either the business or the Applicant Tenant are acting contrary to public peace and good order. The Chief shall notify the applicant in writing and deem corrective measures be put into effect within seven calendar days of such written notification. Upon the failure or inability of the Applicant Tenant to correct such measures within such period, the Police Chief may require the Applicant Tenant to employ one or more police detail officers during such hours or days that the Police Chief in the exercise of his sole discretion deems to be necessary for the purpose of correcting the conditions.

3. Public Peace and Good Order: Applicant Tenant shall obtain appropriate CORI information regarding all employees of Applicant Tenant, and shall keep said information available for inspection by local police upon request.



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4. Parking: No on-street parking shall be permitted on Brigham Street or any other abutting side street or public way.
5. Hours of Operation: The hours of operation of the facility shall not be earlier than 8:00 AM or later than 8:00 PM on any day.
6. Limits of Use: The proposed principal use of Unit 8 is to provide a place of fitness training for children, and to otherwise provide an indoor fitness facility for children. No other kinds of public use shall be allowed at or in Unit 8 except those the Building Commissioner deems ancillary to this principal use.
7. Food Preparation: No food shall be prepared by the Applicant Tenant or the public at or in Unit 8 unless and until the Applicant Tenant obtains a permit and any other approvals from the Director of the Marlborough Board of Health and pays the accompanying fees.
8. Certificate of Occupancy Required: No use of the premises will be made pursuant to this Special Permit unless and until a Certificate of Occupancy has been obtained from the Building Commissioner regarding the change of use of the premises.
9. No Expansion of Use Area or Change in Area Configuration: Only the area of Unit 8, containing approximately 6,000 sq. ft., which has been specified in the Plans attached hereto, will be used for the proposed use. To the extent that a substantial increase in, or a change in the configuration of, the area used for this use is desired, the Building Commissioner shall determine whether such increase or change constitutes a substantial change of the permitted use, and if so, no such area increase or configuration change shall be permitted unless and until this Special Permit has been modified by the City Council.
10. Subsequent Users: Before any successor tenant uses Unit 8 for the uses allowed in this Special Permit, the Director of the Marlborough Board of Health shall determine in writing that any permit required of Applicant Tenant, and any other permit determined by the Director to be necessary, has been obtained.
11. Required Approval Regarding Sanitary Conditions: Prior to the beginning of operation of the business, the Director of the Marlborough Board of Health shall determine in writing what, if any, special sanitary requirements are necessary at or in Unit 8 in order to ensure that the facility does not cause unusual health risks to those using the facility or to the public. The Director may later, in writing, amend and/or add to said requirements as the Director deems necessary. Such determination, and any such amendments and/or additions, shall be provided by the Director to the City Council. Any failure to comply with said sanitary requirements shall be a violation of this permit.



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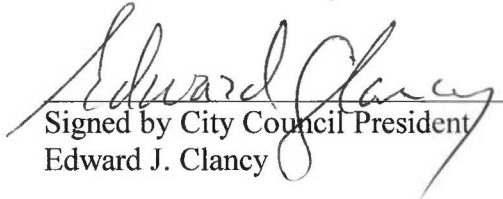
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12. Recordation: In accordance with the provisions of M.G.L. c. 40A, § 11, the Applicant Tenant shall, at its expense, record this Special Permit with the Middlesex South District Registry of Deeds after the City Clerk has certified that the twenty-day period for appealing this Special Permit has elapsed with no appeal hearing being filed. The Applicant Tenant shall provide a copy of the recorded Special Permit to the City Clerk, the City Solicitor, and the Building Commissioner.

Yea: 11 – Nay: 0

Yea: Delano, Doucette, Dumais, Tunnera, Irish, Clancy, Landers, Juairé, Oram, Ossing & Robey.


Signed by City Council President
Edward J. Clancy

ADOPTED
In City Council
18-1007399B