

**117-07-BZ**

**CEQR #06-BSA-082M**

APPLICANT – Ellen Hay, Wachtel & Masyr LLP, for Rosebud Associates, LLC, owner.

SUBJECT – Application May 10, 2007 – Special Permit (§73-36) to allow the operation of the proposed PCE on a portion of the first floor and the second floor in vacant space in an existing 21-story mixed-use building. The Premises is located in a C1-9A "TA" zoning district. The proposal is contrary to section 32-00.

PREMISES AFFECTED – 222 East 34<sup>th</sup> Street, south side of East 34<sup>th</sup> Street, between Second and Third Avenues, Block 914, Lot 36, Borough of Manhattan.

**COMMUNITY BOARD #6M**

APPEARANCES –

For Applicant: Ellen May.

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

**THE VOTE TO GRANT** –

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

Negative:.....0

**THE RESOLUTION:**

WHEREAS, the decision of the Manhattan Borough Commissioner, dated May 10, 2007, acting on Department of Buildings Application No. 104741549, reads in pertinent part:

“Proposed ‘Physical Culture Establishment’ is not permitted as-of-right in C1-9A zoning district. This use is contrary to Section 32-10 ZR”; and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03, to permit, on a site within a C1-9A zoning district within Special Transit Land Use “TA” Zoning District, the establishment of a physical culture establishment (PCE) in a portion of first and all of the second floor of an existing 21-story mixed use building, contrary to ZR § 32-10; and

WHEREAS, a public hearing was held on this application on July 10, 2007, after due notice by publication in *The City Record*, and then to decision on July 24, 2007; and

WHEREAS, Community Board 6, Manhattan, recommends approval of this application; and

WHEREAS, the premises had site and neighborhood examinations by Chair Srinivasan, Vice Chair Collins, Commissioner Hinkson, and Commissioner Ottley-Brown; and

WHEREAS, the subject site is located on the south side of East 34<sup>th</sup> Street, between Second and Third Avenues; and

WHEREAS, the site is occupied by a 21-story mixed-use commercial and residential building; and

WHEREAS, the PCE will be located in a currently vacant part of the commercial portion of the building; and

WHEREAS, the PCE will occupy a total of

26,193 sq. ft. of floor area, which includes 4,444 sq. ft. on the first floor and 21,749 sq. ft. on the second floor; and

WHEREAS, the applicant represents that the PCE will offer classes and equipment for physical improvement, personal training, strength training, weight training, group fitness programs, and cardiovascular programs, with locker rooms, steam and sauna rooms, a spa, kids’ club and lounge/juice bar; and

WHEREAS, the PCE will be operated by Club H. NY, LLC; and

WHEREAS, the proposed hours of operation are: Monday through Thursday, 5:00 a.m. to 11:00 p.m.; Friday 5:00 a.m. to 9:00 p.m., and Saturday and Sunday, 7:00 a.m. to 7:00 p.m.; and

WHEREAS, at hearing the Board expressed concern about the location of the PCE in proximity to the residential portion of the building; and

WHEREAS, applicant represented that it has retained an acoustic consultant to ensure that there is not noise impact on residential units and has agreed to implement the consultant’s recommendations; and

WHEREAS, additionally, applicant submitted a copy of its lease, which requires the PCE to provide soundproofing; and

WHEREAS, the Board finds that this action will neither: 1) alter the essential character of the surrounding neighborhood; 2) impair the 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 PCE will not interfere with any pending public improvement project; 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, therefore, the Board 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; 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. 07BSA082M dated May 2, 2007; and

WHEREAS, the EAS documents show that the continued operation of the PCE would not have significant adverse impacts on Land Use, Zoning, and Public Policy; Socioeconomic Conditions; Community

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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 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 and 73-03, to permit, on a site within an M1-1 zoning district, the establishment of a physical culture establishment on portions of the first and second floors of a building within a commercial mall complex, contrary to ZR § 42-10; *on condition* that all work shall substantially conform to drawings filed with this application marked "Received May 10, 2007"-(5) sheets; and *on further condition*:

THAT the term of this grant shall expire on July 24, 2017;

THAT there shall be no change in ownership or operating control of the physical culture establishment without prior application to and approval from the Board;

THAT the hours of operation shall be limited to: Monday through Thursday, 5:00 a.m. to 11:00 p.m.; Friday 5:00 a.m. to 9:00 p.m., and Saturday and Sunday, 7:00 a.m. to 7:00 p.m.;

THAT massages shall only be performed by New York State licensed massage therapists;

THAT measures are implemented to ensure there is no noise impact from the PCE in residential units in the building;

THAT the above conditions shall appear on the Certificate of Occupancy;

THAT Local Law 58/87 compliance shall be as reviewed and approved by DOB;

THAT fire safety measures shall be installed

**A true copy of resolution adopted by the Board of Standards and Appeals, July 24, 2007.**

**Printed in Bulletin No. 29, Vol. 92.**

**Copies Sent**

**To Applicant**

**Fire Com'r.**

**Borough Com'r.**

and/or maintained as shown on the Board-approved plans;

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 shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings 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, July 24, 2007.