

**171-15-BZ**

**CEQR #16-BSA-011M**

APPLICANT – Juan D. Reyes, III, Shefarth Shaw LLP, for 281 Broadway LLC, owner; James and Jennifer McDate (CrossFit), lessee.

SUBJECT – Application July 29, 2015 – Special Permit (§73-36) to allow a physical culture establishment (*CrossFit*) to be operated within an existing building, C6-4A zoning district.

PREMISES AFFECTED – 281 Broadway, between Reade Street and Chambers Street, Block 149, Lot 7502, Borough of Manhattan.

**COMMUNITY BOARD #1M**

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

THE VOTE TO GRANT –

Affirmative: Chair Perlmutter, Vice-Chair Hinkson, Commissioner Montanez and Commissioner Chanda...4

Negative: .....0

Absent: Commissioner Ottley-Brown.....1

THE RESOLUTION –

WHEREAS, the decision of the Department of Buildings (“DOB”), dated July 23, 2015, acting on DOB Application No. 121192146, reads in pertinent part:

“Proposed change of cellar use to a physical culture establishment as defined by ZR 12-10 is contrary to ZR 32-10 and must be referred to the Board of Standards and Appeals for approval pursuant to ZR 73-36”; and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03 to legalize, on a zoning lot partially located within a C6-4A zoning district, partially within a C6-3A zoning district and partially within the Tribeca Mixed-Use District, a physical culture establishment (“PCE”) in the cellar of an existing 20-story, with cellar, mixed-use commercial and residential building; and

WHEREAS, a public hearing was held on this application on October 18, 2016 after due notice by publication in *The City Record*, with a continued hearing on January 10, 2017, and then to decision on January 24, 2017; and

WHEREAS, Community Board 1, Manhattan, recommends approval of this application; and

WHEREAS, Vice-Chair Hinkson, Commissioner Ottley-Brown, Commissioner Montanez and Commissioner Chanda performed inspections of the site and surrounding neighborhood; and

WHEREAS, Lot 7502 is part of a zoning lot description, filed February 5, 2007, that includes adjacent Lots 3 and 29 on Block 149 (collectively, the “Development Site”) for purposes of facilitating a transfer of development rights; and

WHEREAS, the Development Site is partially located within a C6-4 zoning district, partially within a C6-3A zoning district and partially within the Tribeca Mixed-Use District, in Manhattan; and

WHEREAS, the Development Site has approximately 100 feet of frontage along Broadway, 198 feet of frontage along Reade Street and 50 feet of frontage along Chambers Street; and

WHEREAS, the subject PCE is located solely on the portion of the Development Site identified as Lot 7502 (the “Subject Site”), located on the west side of Broadway, between Reade Street and Chambers Street and is wholly located within a C6-4A zoning district, in Manhattan; and

WHEREAS, the Subject Site has approximately 75 feet of frontage along Broadway, 27 feet of frontage along Reade Street, 9,098 square feet of lot area and is occupied by a twenty-story, with cellar, mixed-use commercial and residential building (the “Subject Building”); and

WHEREAS, ZR § 73-36(a) provides that 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 may permit physical culture or health establishments as defined in Section 12-10 for a term not to exceed ten years, provided that 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
- (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 [sic] 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 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.; and

WHEREAS, ZR § 73-36(b) sets forth additional findings that must be made where a physical culture or health establishment is located on the roof of a commercial building or the commercial portion of a mixed building in certain commercial districts; and

WHEREAS, because no portion of the subject PCE is located on the roof of a commercial building or the commercial portion of a mixed building, the

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additional findings set forth in ZR § 73-36(b) need not be made or addressed; and

WHEREAS, ZR § 73-36(c) provides that no special permit shall be issued 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.; and

WHEREAS, the Board notes that in addition to the foregoing, its determination is also subject to and guided by ZR § 73-03; and

WHEREAS, the Board notes that pursuant to ZR § 73-04, it has prescribed certain conditions and safeguards to the subject special permit in order to minimize the adverse effects of the special permit upon other property and community at large; the Board notes further that such conditions and safeguards shall be incorporated in the building permit and certificate of occupancy of the subject building, and that failure to comply with such conditions or restrictions shall constitute a violation of the Zoning Resolution and may constitute the basis for denial or revocation of a building permit or certificate of occupancy and for all other applicable remedies; and

WHEREAS, as a threshold matter, the Board notes that the site is within the boundaries of a designated area in which the subject special permit is available; and

WHEREAS, the subject PCE occupies 4,765 square feet of floor space in the cellar of the Subject Building; and

WHEREAS, the PCE has been operating as CrossFit TriBeCa since approximately September 2013; and

WHEREAS, the applicant represents that the cellar contains fitness areas, including areas for weight lifting, rowing and high bar use, showers, changing areas, a reception area, storage and a retail area; and

WHEREAS, the PCE is primarily accessed via stairs or an elevator from the lobby of the Subject Building fronting Broadway and represents that one of the bathrooms and shower facilities, in addition to all interior aisles and spaces, will be handicap accessible; and

WHEREAS, the PCE's hours of operation are 5:00 a.m. to 9:00 p.m. seven days per week; and

WHEREAS, the applicant states that the subject PCE is located entirely within the cellar of the existing building and, therefore, its visibility from the street is limited; that the surrounding area is predominantly commercial, containing a range of uses from retail and commercial offices to parkland; that the PCE would generate less traffic than nearby existing commercial uses; and that, therefore, the PCE will not impair the essential character or future uses in the area; and

WHEREAS, with regards to sound attenuation in the proposed PCE, the applicant states that the walls around the studios contain two layers of 5/8" gypsum board on both side of 3/8" metal studs with sound attenuation blanks and an STE rating of 52; that the weight lifting area utilizes 1-inch plywood mounted to 6" wood frames on rubber isolators with isolation rubber on top; that the drop cushioned areas feature multiple layers of matting, a steel plate, 4" foam rubber, with 1" deflection spring isolators inset into foam to support the steel plate; that the studios contain sound-insulated transfer ducts; and that the primary structure of the building is concrete, which minimizes sound transference between floors; and

WHEREAS, as the subject PCE is located in a building with residential uses, the Board asked for proof of notice of this application to building residents in an effort to illicit neighborhood comment or complaints, if any, regarding the efficacy of the PCE's sound attenuation measures or the disruptive nature of the PCE use; and

WHEREAS, in response to the Board's request, the applicant provided a copy of the 30-day notice and represented that the same was posted in the residential lobby of the Subject Building; and

WHEREAS, in addition, the applicant submitted the results of acoustical and vibrational weight drop testing in the PCE, utilizing 150-pound weights, and concluded that the sounds and vibrations of the weights were imperceptible from the 11 nearby testing locations; and

WHEREAS, in the course of hearings, no persons submitted oral or written testimony in opposition to the subject application; and

WHEREAS, accordingly, the Board finds that the PCE use is so located as to not impair the essential character or the future use or development of the surrounding area; and

WHEREAS, with regards to the use of the premises, the applicant represents that the PCE contains a single open exercise room, which is used for instruction and programs for physical improvement; and

WHEREAS, the Board finds that the PCE use is consistent with those eligible, pursuant to ZR § 73-36(a)(2), for the issuance of the special permit; and

WHEREAS, the Department of Investigation has performed a background check on the corporate owner

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and operator of the establishment and the principals thereof, and issued a report which the Board has deemed to be satisfactory; and

WHEREAS, the applicant has submitted plans to the Board indicating that the entire PCE space contains an approved interior fire suppression sprinkler system as well as an approved fire alarm system—including area smoke detectors, manual pull stations at each required exit, local audible and visual alarms and connection of the interior fire alarm to an FDNY-approved central station; and

WHEREAS, the Fire Department confirms, by letter dated October 17, 2016, that, an approved interior fire alarm system has been legally installed, tested and approved and that the Subject Building has an inspected and approved full sprinkler system; and

WHEREAS, pursuant to ZR § 73-03, the Board finds that, under the conditions and safeguards imposed, the hazards or disadvantages to the community at large of the PCE use are outweighed by the advantages to be derived by the community; and

WHEREAS, the applicant states that the PCE will not interfere with any pending or approved public improvement project; and

WHEREAS, therefore, the Board has determined that the evidence in the record supports the requisite findings for the special permit pursuant to ZR §§ 73-36 and 73-03; and

WHEREAS, the Board notes that the term of this grant has been reduced to reflect the period of time that the PCE has operated at the premises without the special permit; and

WHEREAS, the project is classified as a Type II action pursuant to 6 NYCRR Part 617.5; and

WHEREAS, the Board has conducted a review of the proposed Checklist action discussed in the CEQR Checklist No. 16-BSA-011M, dated July 29, 2015; and

*Therefore, it is Resolved,* that the Board of Standards and Appeals issues a Type II determination under 6 NYCRR Part 617.3 and 617.5, §§ 5-02(a) and 5-02(b)(2) 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 legalize, on a zoning lot partially located within a C6-4 zoning district, partially within a C6-3A zoning district and partially within the Tribeca Mixed-Use District, , the operation of a physical culture establishment on a portion of the cellar of a 20-story,

**A true copy of resolution adopted by the Board of Standards and Appeals, January 24, 2017.**

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**Copies Sent**

**To Applicant**

**Fire Com'r.**

**Borough Com'r.**

with cellar, mixed-use commercial and residential building, contrary to ZR § 32-10; on condition that all work shall substantially conform to drawings filed with this application marked “Received December 27, 2016”-Two (2) sheets and “January 17, 2017”-Three (3) sheets; and on further condition:

THAT the term of this grant shall be for ten (10) years, expiring January 24, 2026;

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

THAT minimum 3'-0" wide exit pathways shall be provided leading to the required exits and that exit pathways shall be maintained unobstructed, including from any gymnasium equipment;

THAT an approved interior fire alarm system shall be maintained in the entire PCE space and that such system shall include: area smoke detectors, manual pull stations at each required exit, local audible and visual alarms, and connection of the interior fire alarm and sprinkler system to an FDNY-approved central station;

THAT Local Law 58/87 shall be complied with as approved by DOB;

THAT an approved fire suppression sprinkler system shall be maintained in the entire PCE space;

THAT noise attenuation measures shall be installed and maintained as indicated on the BSA-approved plans;

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

THAT a Certificate of Occupancy shall be obtained within one (1) year, by January 24, 2018;

THAT this approval is limited to the relief granted by the Board in response to specifically cited objection(s);

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

THAT DOB 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, January 24, 2017.

