

**173-95-BZ**

APPLICANT – Rothkrug Rothkrug & Spector LLP, for 30 East 85<sup>th</sup> Street Company LLC, owner; Equinox Madison Avenue, Inc., lessee.

SUBJECT – Application July 12, 2017 – Extension of Term of a previously granted Special Permit (§73-36) for the continued operation of Physical Culture Establishment (Equinox) which expired on August 15, 2015; Waiver of the Rules. C5-1/R8B Special Madison Avenue Preservation District.

PREMISES AFFECTED – 30 East 85<sup>th</sup> Street, Block 1496, Lot 7501, Borough of Manhattan.

**COMMUNITY BOARD #8M**

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

**THE VOTE TO GRANT** –

Affirmative: Vice-Chair Chanda, Commissioner Ottley-Brown and Commissioner Sheta.....3

Negative: .....0

Absent: Chair Perlmutter.....1

**THE RESOLUTION** –

WHEREAS, this is an application for a waiver of the Board’s Rules of Practice and Procedure, an extension of the term of a previously granted special permit for a physical culture establishment (“PCE”), which expired on August 15, 2015, and an amendment to the same to permit a change in operator of the PCE; and

WHEREAS, a public hearing was held on this application on December 5, 2017, after due notice by publication in *The City Record*, with a continued hearing on February 13, 2018, and then to decision on that date; and

WHEREAS, Vice-Chair Chanda and former Vice-Chair Hinkson performed inspections of the site and surrounding neighborhood; and

WHEREAS, Community Board 8, Manhattan, recommends approval of this application; and

WHEREAS, the subject site is located at the southwest corner of East 85th Street and Madison Avenue, partially within a C5-1 zoning district and the Special Madison Avenue Preservation District and partially within an R8B zoning district, in Manhattan; and

WHEREAS, the site has approximately 120 feet of frontage along East 85th Street, 142 feet of frontage along Madison Avenue and is occupied by a 30-story mixed-use residential and commercial building; and

WHEREAS, the Board has exercised jurisdiction over the subject site since March 3, 1998, when, under the subject calendar number, the Board granted a special permit, pursuant to ZR § 73-36, legalizing an existing PCE on a portion of the first floor and the entire second floor of the subject building on conditions that there be no change in ownership or operating control of the PCE without prior application to and approval from the Board; locked tamper-proof sound controllers on the aerobics and house sound systems be

maintained in order to minimize adverse noise impacts on the residential units in the building; aerobics’ instructors’ voice be non-amplified; all speakers be hung from acoustically non-transmitting wires in accordance with BSA-approved plans; individual video systems with headphones and no external speakers be provided and maintained for each client in the cardiovascular area in accordance with BSA-approved plans; all free weights be rubberized and maintained with rubberized or other sound attenuating materials; all weight machines be maintained with sound-attenuating springs; fire prevention measures be installed and maintained in accordance with BSA-approved plans; the hours of operation be limited to 6:00 a.m. to 11:00 p.m. Monday through Friday and 8:00 a.m. to 10:00 p.m. Saturday and Sunday; the aerobics room not be used before 7:00 a.m. Monday through Friday and not before 9:00 a.m. on Saturdays and Sundays; this special permit be limited to a term of ten (10) years from August 15, 1995, to expire on August 15, 2005; and a certificate of occupancy be obtained within one year; and

WHEREAS, on December 19, 2000, under the subject calendar number the Board waived its Rules of Practice and Procedure, reopened and amended the March 1998 resolution to grant a one year extension of time to obtain a certificate of occupancy, expiring December 19, 2001; and

WHEREAS, on August 8, 2006, under the subject calendar number, the Board granted a ten (10) year extension of term, expiring August 15, 2015, on condition that all conditions from prior resolutions not specifically waived by the Board remain in effect; and

WHEREAS, the previous term having expired, the applicant seeks the subject relief; and

WHEREAS, the applicant additionally requests a waiver, pursuant to § 1-14.2 of the Board’s Rules of Practice and Procedure, of Rule § 1-07.3(b)(2) to permit the filing of this application less than two (2) years after the expiration of the term; and

WHEREAS, finally, the applicant requests an amendment of the resolution approving a change in the owner and operator of the PCE from David Barton Gym to Equinox as well as modifications to the interior layout; and

WHEREAS, the applicant represents that the hours of operation remain the same as was approved in 1998 and that an interior fire alarm and sprinklers are installed within the subject PCE space; and

WHEREAS, at hearing, the Board inquired as to whether the PCE was permitted within the portion of the building located in an R8-B zoning district, the district boundary for which is located 100 feet to the west of and parallel to Madison Avenue (an area approximately 20 wide by 102 feet deep), or whether, pursuant to ZR § 77-11, the use regulations applicable in a C5-1 zoning district may be applied to the entire zoning lot, thus permitting the PCE use in that portion

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of the building; and

WHEREAS, in response, the applicant provided plans for the subject building approved by the Department of Buildings on January 8, 1987, and indicating on the site plan, with regards to the portion of the building located in an R8-B zoning district, "R8B Treated As C5-1/R10 As Per 77-03 & 77-11;" and

WHEREAS, the applicant has satisfactorily demonstrated compliance with the conditions of the previous term and the Board finds that the circumstances warranting the original grant still obtain; and

WHEREAS, accordingly, the Board finds that a ten (10) year extension of the term of the special permit is appropriate, with the conditions set forth below.

*Therefore it is Resolved*, that the Board of Standards and Appeals *reopens* and *amends* the resolution, dated March 3, 1998, as amended through August 8, 2006, so that as amended this portion of the resolution shall read: "to permit an extension of the term of the special permit for a term of ten (10) years, expiring August 15, 2025, *on condition* that all work and site conditions shall comply with drawings filed with this application marked 'Received August 3, 2017- Five (5) sheets; and *on further condition*:

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

THAT locked tamper-proof sound controllers on the aerobics and house sound systems shall be maintained in order to minimize adverse noise impacts on the residential units in the building;

THAT aerobics' instructors' voice shall be non-amplified; all speakers shall be hung from acoustically non-transmitting wires in accordance with BSA-approved plans;

THAT individual video systems with headphones and no external speakers shall be provided and maintained for each client in the cardiovascular area in accordance with BSA-approved plans;

THAT all free weights shall be rubberized and maintained with rubberized or other sound attenuating materials;

THAT all weight machines shall be maintained with sound-attenuating springs;

THAT the existing sprinklers and fire alarm systems shall be modified per the modifications to the interior layout, operational and maintained;

THAT the hours of operation shall be limited to 6:00 a.m. to 11:00 p.m. Monday through Friday and 8:00 a.m. to 10:00 p.m. Saturday and Sunday;

**A true copy of resolution adopted by the Board of Standards and Appeals, February 13, 2018.**

**Printed in Bulletin No. 8, Vol. 103.**

**Copies Sent**

**To Applicant**

**Fire Com'r.**

**Borough Com'r.**

THAT the aerobics room shall not be used before 7:00 a.m. Monday through Friday and not before 9:00 a.m. on Saturdays and Sundays;

THAT this special permit shall be limited to a term of ten (10) years from August 15, 2015, to expire on August 15, 2025;

THAT the above conditions shall appear on the certificate of occupancy;

THAT a certificate of occupancy shall be obtained within one (1) year;

THAT all conditions from prior resolutions not specifically waived by the Board remain in effect;

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 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, February 13, 2018.

