

**187-15-BZ**

**CEQR #16-BSA-017M**

APPLICANT – Law Office of Jay Goldstein, for 277 Park Avenue LLC, owner; Sheva NY Inc., lessee.

SUBJECT – Application August 14, 2015 – Proposed operation of a physical culture establishment (*Sheva Thai Spa*) on a portion of the ground floor of the premises. C5-3/C6-6, MID zoning district.

PREMISES AFFECTED – 500-514 Lexington Avenue aka 100-102, East 27th St. East 48th Park Avenue, Block 1302, Lot 7501, Borough of Manhattan.

**COMMUNITY BOARD #5M**

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

THE VOTE TO GRANT –

Affirmative: Chair Perlmutter, Vice-Chair Hinkson, Commissioner Ottley-Brown, Commissioner Montanez and Commissioner Chanda.....5

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Manhattan Borough Commissioner, dated February 3, 2016, acting on Department of Buildings Application No. 122440607, reads in pertinent part:

“Proposed ‘Physical Culture Establishment’ in above zoning districts is not permitted As-Of-Right as per section ZR 32-31 and a special permit by the Board of Standards and Appeals (BSA) is required to comply with ZR 73-36”; and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03, to permit, on a site located partially within a C5-3 zoning district and partially within a C6-6 zoning district and in the Special Midtown District and the Grand Central Subdistrict, the operation of a physical culture establishment (PCE), contrary to ZR § 32-10; and

WHEREAS, a public hearing was held on this application on February 23, 2016 after due notice by publication in *The City Record*, and then to decision on the same date; and

WHEREAS, Community Board 5, Manhattan, recommends approval of this application; and

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

WHEREAS, the subject site is the entire city block bound by Lexington Avenue on the east, Park Avenue on the west, East 48th Street on the north and East 47th Street on the south, partially within a C5-3 zoning district and partially within a C6-6 zoning district and in the Special Midtown District and the Grand Central Subdistrict, in Manhattan; and

WHEREAS, the site has approximately 201 feet of frontage along both Lexington Avenue and Park Avenue, 405 feet of frontage along both East 48th

Street and East 47th Street and 81,336 sq. ft. of lot area; and

WHEREAS, the subject site is occupied by 50-story commercial building; and

WHEREAS, the Board has exercised jurisdiction over the subject site since December 10, 1996 when, under BSA Calendar No. 58-96-BZ, the Board granted a special permit for the operation of a PCE, operated as Manhattan Athletic Club, with approximately 13,000 sq. ft. of floor area on portions of the first floor and basement of the building, expiring December 10, 2016; and

WHEREAS, the subject proposed PCE will occupy 1,345 sq. ft. of floor area on the ground floor of the building on the subject site located wholly within a C5-3 zoning district (the “Premises”) and accessible from Lexington Avenue; and

WHEREAS, the PCE will be operated as a Sheva Thai Spa; and

WHEREAS, the applicant represents that the facility will include an open area for salon treatments, manicures, pedicures, waxing and foot massage as well as two massage rooms; and

WHEREAS, the applicant asserts that the Premises has previously operated as a day spa without massage services since approximately August 2015 and the applicant makes the subject application in order to offer massages as an additional treatment for its patrons; and

WHEREAS, the applicant represents that massages are not currently being offered at the Premises; and

WHEREAS, the proposed hours of operation for the PCE are: Monday through Friday, 8:00 a.m. to 10:00 p.m. and Saturday through Sunday, 10:00 a.m. to 7:00 p.m.; 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 deemed to be satisfactory; and

WHEREAS, the Fire Department states that it has no objections to the proposal; and

WHEREAS, the applicant has represented that interior sprinklers and an approved interior fire alarm system—including area smoke detectors, manual pull stations at each required exit, local audible and visual alarms, and connection to a Fire Department-approved central station—shall be installed in the entire PCE space; and

WHEREAS, with regards to sound attenuation, the applicant states that the floors of the PCE will have resilient flooring with an STC rating of 52 installed on slab on grade; that the PCE space is located directly above Grand Central Station train tracks and there are no tenants below; the existing ceiling is concrete slab with a 12’-0” cavity containing building mechanicals and a GWB hung ceiling; and that these measures are adequate

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because the PCE use does not include exercise and, thus, will not create excessive noise; and

WHEREAS, the Premises occupies a small portion of the subject building, which is located in an area comprised of residential, retail and commercial uses; and

WHEREAS, the applicant states that the PCE will neither increase traffic to the surrounding area nor negatively impact the neighborhood because its patrons will either work or live in the immediately surrounding area and walk to the Premises; and

WHEREAS, the applicant states that the proposed PCE is consistent with the goals for the Special Midtown District set forth in ZR § 81-00 because it will be a valuable amenity to the building and the surrounding area; it is fully contained within the envelope of an existing building and will thus have no impact on the access of light and air to the streets and avenues of Midtown; that as the patrons will be from the subject building and the immediate area, the PCE will have no impact on pedestrian circulation, pedestrian access to rapid transit facilities or create any conflicts with vehicular or pedestrian traffic; and that the PCE will not change the exterior of the building and thus have no impact on the historical architectural character of the surrounding neighborhood; and

WHEREAS, the applicant furthers states that the proposed PCE is compliant with all bulk and sign regulations for the Special Midtown District and is thus consistent with the purposes and provisions of ZR § 81-00, et seq., as required in ZR § 81-13; and

WHEREAS, the PCE will not interfere with any public improvement projects; and

WHEREAS, accordingly, 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 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 Type II action pursuant to 6 NYCRR Part 617.5; and

**A true copy of resolution adopted by the Board of Standards and Appeals, February 23, 2016.**

**Printed in Bulletin Nos. 8-9, Vol. 101.**

**Copies Sent**

**To Applicant**

**Fire Com'r.**

**Borough Com'r.**

WHEREAS, the Board has conducted a review of the proposed Checklist action discussed in the CEQR Checklist No. 16-BSA-017M, dated July 8, 2015; and

*Therefore it is Resolved*, that the Board of Standards and Appeals issues a Type II determination 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 located partially within a C5-3 zoning district and partially within a C6-6 zoning district and in the Special Midtown District and the Grand Central Subdistrict, the operation of a physical culture establishment (PCE), contrary to ZR § 32-10; *on condition* that all work shall substantially conform to drawings filed with this application marked "Received August 14, 2015"- Four (4) sheets; and *on further condition*:

THAT the term of the PCE grant will expire on February 23, 2026;

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

THAT accessibility compliance under Local Law 58/87 will be as reviewed and approved by DOB;

THAT fire safety measures will be installed and/or maintained as shown on the Board-approved plans;

THAT the above conditions will appear on the Certificate of Occupancy; and

THAT all DOB and related agency application(s) filed in connection with the authorized use and/or bulk will be signed off by DOB and all other relevant agencies by February 23, 2020;

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

THAT the approved plans will 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, February 23, 2016.

