

**2016-4126-BZ**

**CEQR #16-BSA-082M**

APPLICANT – Rothkrug Rothkrug & Spector LLP, for 670 Broadway Owner LP, owner; Equinox 670 Broadway, Inc., lessee.

SUBJECT – Application February 24, 2016 – Special Permit (§73-36) to operate a physical culture establishment (*Equinox*) within an existing building, M1-5B zoning district.

PREMISES AFFECTED – 670 Broadway, Block 530, Lot 1, Borough of Manhattan.

**COMMUNITY BOARD #2M**

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

**THE VOTE TO GRANT** –

Affirmative: Chair Perlmutter, Commissioner Ottley-Brown, Commissioner Montanez and Commissioner Chanda.....4

Negative: .....0

**THE RESOLUTION** –

WHEREAS, the decision of the Department of Buildings (“DOB”) Manhattan Borough Commissioner, dated January 11, 2017, acting on DOB Application No. 122928788, reads in pertinent part:

“The proposed Physical Culture Establishment located in an M1-5B Zoning District is contrary to ZR 42-[10] and requires a special permit from the Board of Standards and Appeals”; and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03 to legalize, on a site located in an M1-5B zoning district and within the NoHo Historic District, the operation of a physical culture establishment (“PCE”) on portions of the sub-cellar, cellar, first, second, mezzanine and third floors of an existing five-story commercial building, contrary to ZR § 42-10; and

WHEREAS, a public hearing was held on this application on January 31, 2017, after due notice by publication in The City Record, and then to decision on February 28, 2017; and

WHEREAS, Community Board 2, Manhattan, recommends approval of this application; and

WHEREAS, Commissioner Ottley-Brown performed an inspection of the site and surrounding neighborhood; and

WHEREAS, the subject site is located on the northeast corner of Bond Street and Broadway, in an M1-5B zoning district within the NoHo Historic District, in Manhattan; and

WHEREAS, the site has approximately 130 feet of frontage along Bond Street, 86 feet of frontage along Broadway, 11,125 square feet of lot area and is occupied by a five-story, with cellar and sub-cellar, commercial 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 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

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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 a total of 22,293 square feet of floor area in the subject building: 1,035 square feet of floor space in the sub-cellar, 9,345 square feet of floor space in the cellar, 1,910 square feet of floor area on the first floor, 9,470 square feet of floor area on the second floor, 1,443 square feet of floor area on the second-floor mezzanine and 9,470 square feet of floor area on the third floor; and

WHEREAS, the PCE has been in operation as Equinox since December 12, 2016; and

WHEREAS, the applicant represents that the sub-cellar contains mechanical space; the cellar contains locker rooms, steam and spa areas, a Pilates studio, laundry facilities, offices and storage; the first floor has an entry lobby, accessible from Bond Street, juice bar and retail shop; the second floor has a sales office as well as strength, cardiovascular equipment and cycling areas; the second-floor mezzanine contains employee areas and storage; and the third floor includes additional cardiovascular equipment areas, yoga space and areas dedicated to stretching and group fitness; and

WHEREAS, the applicant represents that all massages are performed by New York State licensed therapists and submitted licenses for three massage therapists who provide massages within the PCE; and

WHEREAS, the PCE's hours of operation are Monday through Friday, 5:00 a.m. to 11:30 p.m., Saturday and Sunday, 7:00 a.m. to 9:00 p.m.; and

WHEREAS, the applicant states that there is no foreseeable adverse effect on the privacy, quiet, light and air in the surrounding area and that, therefore, the proposed PCE will not impair the essential character or future use or development of the area; and

WHEREAS, with regards to sound attenuation in the PCE, the applicant represents that noise abatement measures shall be provided in the PCE space to ensure that sound levels in other portions of the building—including sound emanating from any sound system, if installed—do not exceed a maximum interior noise level of 45 dBA; and

WHEREAS, the applicant additionally represents that no sound issues associated with the proposed PCE use are anticipated as the PCE is located within a manufacturing district; 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 facilities for physical-improvement, body-building, weight-reduction and aerobics programs; 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 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 PCE is fully sprinklered and that an approved interior 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 a Fire Department-approved central station—is installed in the entire PCE space; and

WHEREAS, the applicant has also provided documentation confirming that DOB has inspected and approved the sprinkler system installed at the premises and a fire alarm; and

WHEREAS, the Fire Department states that, based on its review of the drawings and supporting documentation for the PCE, it has no objection to this application; and

WHEREAS, the Landmarks Preservation Commission ("LPC") issued Certificate of No Effect No. 17-7757, dated October 13, 2015, and expiring October 15, 2019; No. 18-7321 dated June 15, 2016, and expiring June 15, 2020, and No. 19-0793, dated July 15, 2016, and expiring July 15, 2020, for alterations associated with the subject PCE application, finding that the work will have no effect on significant protected features of the building; 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

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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 I action pursuant to 6 NYCRR Part 617.4; 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. 16-BSA-082M, dated February 24, 2016; and

WHEREAS, the EAS documents that the operation of the PCE would not have significant adverse impacts on Land Use, Zoning, and Public Policy; Socioeconomic Conditions; Community Facilities; Open Space; Shadows; Historic and Cultural Resources; Urban Design and Visual Resources; Natural Resources; Hazardous Materials; Wate and Sewer Infrastructure; Solid Waste and Sanitation Services; Energy; Transportation; Air Quality; Greenhouse Gas Emissions; Noise; Public Health; Neighborhood Character; and Construction; 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 Type I Negative Declaration 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 in an M1-5B zoning district and the NoHo Historic District, the operation of a physical culture establishment (“PCE”) on portions of the sub-cellar, cellar, first, second, mezzanine and third floors of an existing five-story commercial building, contrary to ZR § 42-10; on condition that all work shall substantially conform to drawings filed with this application marked “September 27, 2016”-Seventeen (17) sheets; and on further condition:

THAT the term of this grant shall be for ten (10) years, expiring December 12, 2026;

THAT there shall be no change in ownership or

**A true copy of resolution adopted by the Board of Standards and Appeals, February 28, 2017.**

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**Copies Sent**

**To Applicant**

**Fire Com'r.**

**Borough Com'r.**

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 pathways shall be maintained unobstructed, including from any gymnasium equipment;

THAT the installed sprinklers and interior fire alarm systems shall be maintained;

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

THAT noise abatement provided in the PCE space shall ensure that sound levels in other portions of the building do not exceed the maximum interior noise level of 45 dBA—including sound emanating from any sound system, if installed;

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

THAT a Certificate of Occupancy shall be obtained within one (1) year, by February 28, 2018;

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 28, 2017.

