

2016-4470-BZ

CEQR #17-BSA-056M

APPLICANT – Rothkrug Rothkrug & Spector LLP, for 140 BW LLC, owner; Crunch LLC, lessee.

SUBJECT – Application December 22, 2016 – Special Permit (§73-36) to operate a physical culture establishment (*Crunch Fitness*) within an existing building. C5-5 (Lower Manhattan Special District) within the Marine Midland Bank Building (New York City Landmark).

PREMISES AFFECTED – 140 Broadway, Block 48, Lot 1, Borough of Manhattan.

COMMUNITY BOARD #1M

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

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

Negative:0

THE RESOLUTION —

WHEREAS, the decision of the Department of Buildings (“DOB”), dated November 22, 2016, acting on Alteration Application No. 122935609, reads in pertinent part:

“Proposed physical culture establishment, in C5-5 (LM) zoning district, is contrary to Section 32-10 ZR and requires a special permit from the BSA”; and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03 to permit, in a C5-5 zoning district and the Special Lower Manhattan District, the operation of a physical culture establishment in the sub-cellars and on the first floor of a 51-story commercial building, contrary to ZR § 32-10; and

WHEREAS, a public hearing was held on this application on June 20, 2017, after due notice by publication in *The City Record*, and then to decision on June 20, 2017; and

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

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

WHEREAS, the subject site is located on the east side of Broadway, between Liberty Street and Cedar Street, in a C5-5 zoning district and the Special Lower Manhattan District, in Manhattan; and

WHEREAS, the site has approximately 144 feet of frontage along Broadway, 318 feet of frontage along Liberty Street, 184 feet of frontage along Nassau Street, 311 feet of frontage along Cedar Street, 52,636 square feet of lot area and is occupied by a 51-story, with cellar and sub-cellars, commercial building; and

WHEREAS, the building is the former Marine Midland Bank Building, an individual landmark designated by the New York City Landmarks Preservation Commission (“LPC”) on June 25, 2013; 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

**2016-4470-BZ
CEQR #17-BSA-056M**

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 and 73-36(b)(4), 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 proposed PCE will occupy 28,611 square feet of floor space (1,317 square feet of floor area) as follows: 27,294 square feet of floor space in sub-cellars level B, including exercise-equipment areas, group-fitness spaces, a yoga studio, a spinning studio, locker rooms with saunas and an office, and 1,317 square feet of floor area on the first floor, serving as a lobby; and

WHEREAS, the PCE will be operated as Crunch Fitness with proposed hours of operation of Monday to Friday, 5:00 a.m. to 11:30 p.m., and Saturday and Sunday, 7:00 a.m. to 9:00 p.m.; and

WHEREAS, the applicant represents that the proposed PCE will be located below ground, under an existing bank vault, storage space and mail room with only a minor portion below office space, within an existing commercial building; and

WHEREAS, in addition, the applicant submits that sound attenuation measures will be provided within the space so as to not disturb other tenants in the building and to ensure that sound levels in adjacent building areas do not exceed 45 dBA, including rubber matting and ceiling-suspended gypsum board; and

WHEREAS, at the Board's request, the applicant provided the results of a noise survey conducted at the premises, concluding that 35 pound weight drops would be rendered inaudible at the lobby level with the use of the 2-1/2" mat utilized during testing and the following recommendations received from a consultant regarding limiting the transmission of sound from the proposed PCE: a sound barrier ceiling consisting of two layers of 5/8" gypsum board suspended from spring hangers with insulation throughout the ceiling space; speakers should be isolated and subwoofers mounted resiliently on the floor using neoprene waffle pads; sound level limiters be hardwired into the speaker system; resilient headers

on all walls associated with impact noise or containing a room with elevated noise levels (i.e. the "Throw Wall" within the Group Training Room"); installation of a 2-1/2" thick rubber tile floor in areas containing weight stack equipment and free weights; resilient fitness flooring in the cardio equipment area; installation of a specialized floor system—consisting of a finish layer of interlocking recycled rubber tiles, a layer of softer polymer, and dimpled recycled rubber layer at the bottom—in the CrossFit activity areas; 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 states that the PCE provides facilities for classes, instruction and programs for physical improvement, including spinning and yoga; 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 represents that the PCE will be fully sprinklered and that an approved interior fire alarm—including area smoke detectors, manual pull stations at each required exit, local audible and visual alarms, and a connection to an FDNY-approved central station—will be installed in the entire PCE space; and

WHEREAS, by letter dated April 19, 2017, the Fire Department states that it has no objection to this application; and

WHEREAS, the LPC issued Certificate of Appropriateness No. 18-3035 (Docket No. 181978) dated March 8, 2016, expiring May 12, 2021, for alterations associated with the subject application; and

WHEREAS, on April 24, 2017, LPC permitted an amendment to the work approved under the Certificate of Appropriateness; 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 represents that the PCE will not interfere with any public improvement projects; and

WHEREAS, the Board has determined that the evidence in the record supports the findings required to be made under ZR § 73-03; 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

2016-4470-BZ

CEQR #17-BSA-056M

environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement CEQR No. 17BSA056M, dated December 22, 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; Water 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; and

WHEREAS, accordingly, 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.

Therefore it is Resolved, that the Board of Standards and Appeals *issues* a Type I Negative Declaration, with conditions as stipulated below, prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617, 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*, in a C5-5 zoning district and the Special Lower Manhattan District, the operation of a physical culture establishment, contrary to ZR § 32-10; *on condition* that all work shall substantially conform to drawings filed with this application marked “Received June 1, 2017”- Six (6) sheets; and *on further condition*:

THAT the term of this grant shall be for ten (10) years, expiring June 20, 2027;

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

**A true copy of resolution adopted by the Board of Standards and Appeals, June 20, 2017.
Printed in Bulletin Nos. 23-24, Vol. 102.**

Copies Sent

To Applicant

Fire Com'r.

Borough Com'r.

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 an FDNY-approved central station—shall be installed in the entire PCE space and the PCE shall be fully sprinklered, as indicated on the BSA-approved plans;

THAT sound attenuation shall be installed in the PCE as indicated on the BSA-approved plans;

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

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

THAT a certificate of occupancy shall be obtained within four (4) years, by June 20, 2021;

THAT this approval is limited to the relief granted by the Board in response to objections cited and filed by the Department of Buildings;

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 other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plans or configurations not related to the relief granted.

Adopted by the Board of Standards and Appeals, June 20, 2017.

