

2017-294-BZ

CEQR #18-BSA-054Q

APPLICANT – Rothkrug Rothkrug & Spector LLP, for Theater Building Enterprise LLC, owner; Blink Myrtle Avenue, Inc., lessee.

SUBJECT – Application November 3, 2017 – Special Permit (§73-36) to operate a physical culture establishment (*Blink*) within an existing building contrary to ZR §32-10. C4-3A zoning district, NYC Landmarked Ridgewood Theater.

PREMISES AFFECTED – 55-27 Myrtle Avenue, Block 3451, Lot 7, Borough of Queens.

COMMUNITY BOARD #5Q

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta and Commissioner Scibetta.....5

Negative:0

THE RESOLUTION –

WHEREAS, the decision of the Department of Buildings (“DOB”), dated December 4, 2017, acting on New Building Application No. 420648829, reads in pertinent part:

“The proposed Physical Culture Establishment is not permitted as of right . . . per ZR 32-10”; and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03 to permit, in a C4-3A zoning district, the operation of a physical culture establishment on a portion of the first floor and cellar of a five-story building, contrary to ZR § 32-10; and

WHEREAS, a public hearing was held on this application on June 5, 2018, after due notice by publication in *The City Record*, and then to decision on the same date; and

WHEREAS, Community Board 5, Queens, recommends approval of this application so long as the PCE be properly soundproofed and the owner comply with applicable requirements of the New York City Landmarks Preservation Commission (“LPC”) for the subject site; and

WHEREAS, Queens Borough President Melinda Katz submitted testimony in support of this application so long as soundproofing sufficient to contain potential noise impacts be installed and the owner maintain the landmarked façade in good repair and appearance as specified by LPC; and

WHEREAS, the subject site is located on the north side of Myrtle Avenue, between Madison Street and Cypress Avenue, in a C4-3A zoning district, in Queens; and

WHEREAS, the subject site has approximately 41 feet of frontage along Myrtle Avenue, 159 feet of frontage along Madison Street, 100 feet of frontage along Cypress Avenue, 17,746 square feet of lot area and is occupied by the Ridgewood Theatre Building, a

five-story, with cellar, mixed-use commercial and residential 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

**2017-294-BZ
CEQR #18-BSA-054Q**

(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 will occupy 14,138 square feet of floor space as follows: 10,558 square feet of floor area on the first floor, including a reception area and spaces for cardiovascular equipment, weight-lifting exercises and stretching, and 4,943 square feet of floor space in the cellar, including locker rooms; and

WHEREAS, the PCE will operate as Blink, with the following hours of operation: Monday to Saturday, 5:30 a.m. to 11:00 p.m., and Sunday, 7:00 a.m. to 9:00 p.m.; and

WHEREAS, the applicant represents that the PCE use is consistent with the vibrant commercial area in which it is located and that the PCE use is fully contained within the envelope of an existing building; and

WHEREAS, in addition, the applicant submits that sound attenuation measures, including rubber flooring and demising walls with batt insulation, will be provided within the space so as to not disturb residents in the subject building; and

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

WHEREAS, the applicant states that the PCE will provide facilities for classes, instruction and programs for physical improvement, body building, weight reduction and aerobics; and

WHEREAS, the Board finds that the subject 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 fire alarm—including area smoke detectors, manual pull stations at each required exist, local audible and visual alarms and connection to an FDNY-approved central station—will be installed in the entire PCE space; and

WHEREAS, the Fire Department represents that it has no objection to this application; 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 finds no adverse effect on the privacy, quiet, light and air in the neighborhood; and

WHEREAS, the proposed special permit use will not interfere with any pending public improvement project; 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 Type II action noted in the CEQR Checklist No. 18-BSA-054Q, dated November 8, 2017; and

WHEREAS, on June 12, 2014, LPC issued a Certificate of No Effect (No. CNE-15-8856) stating that proposed work will have no effect on significant protected features of the subject building, which is an individual landmark; and

WHEREAS, the Board finds that the evidence in the record supports the findings required to be made under ZR §§ 73-36 and 73-03 and that the applicant has substantiated a basis to warrant exercise of discretion.

Therefore it is Resolved, that the Board of Standards and Appeals does hereby *issue* a Type II determination under 6 NYCRR Part 617.5 and 617.3, §§ 5-02(a) and 5-02(b)(2) of the Rules of Procedure for City Environmental Quality Review and makes each and every one of the required findings under ZR §§ 73-36 and 73-03 to *permit*, in a C4-3A zoning district, the operation of a physical culture establishment on a portion of the first floor and cellar of a five-story building, contrary to ZR § 32-10; *on condition* that all work, site conditions and operations shall conform to drawings filed with this application marked “Received November 8, 2017”-Six (6) sheets; and *on further condition*:

THAT this grant shall be limited to a term of ten (10) years, expiring June 5, 2028;

THAT the ceiling and walls of the physical culture establishment shall be sound attenuated to prevent the transmittal of noise and vibration to residents above the physical culture establishment;

**2017-294-BZ
CEQR #18-BSA-054Q**

THAT there shall be no change in ownership or operating control of the physical culture establishment 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 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 Board-approved plans;

THAT sound attenuation shall be installed in the PCE, as indicated on the Board-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 5, 2022;

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 5, 2018.

**A true copy of resolution adopted by the Board of Standards and Appeals, June 5, 2018.
Printed in Bulletin Nos. 23-24, Vol. 103.**

Copies Sent
To Applicant
Fire Com'r.
Borough Com'r.

