

2017-321-BZ
CEQR #18-BSA-076M

APPLICANT – Rothkrug Rothkrug & Spector LLP, for ERY North Tower RHC Tenant LLC, owner; Equinox Hudson Yards, Inc., lessee.

SUBJECT – Application December 19, 2017 – Special Permit (§73-36) to permit the operation of a Physical Cultural Establishment (*Equinox*) located on the first, fourth, fifth and sixth floors of a proposed 72-story mixed-use building contrary to ZR §32-10. C6-4 Special Hudson Yards District.

PREMISES AFFECTED – 560 W. 33rd Street, Block 702, Lot 150, Borough of Manhattan.

COMMUNITY BOARD #4M

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 6, 2017, acting on DOB Application No. 121192618, reads in pertinent part:

Proposed physical cultural establishment at floors “1st, 4th, 5th, and 6th,” including the outdoor roof terrace, in a C6-4 (HY) district is not permitted as of right as per ZR § 32-10; and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03 to permit, on a site located in an C6-4 zoning district and in the Special Hudson Yards District, a physical culture establishment (“PCE”) on portions of the first, fourth, fifth, and sixth floor, and fifth floor terrace, of a proposed 71-story mixed-use residential and commercial building, contrary to ZR § 32-10; and

WHEREAS, on August 21, 2018, the Board granted a special permit pursuant to ZR § 73-36 authorizing the operation of a physical culture establishment—a spa operated by Equinox Hotel—in portions of the first and fifth floors of the subject building under BSA Cal. No. 2018-37-BZ for a term of ten (10) years, expiring August 21, 2028; and

WHEREAS, a public hearing was held on this application on August 14, 2018, after due notice by publication in *The City Record*, with a continued hearing on November 8, 2018, and then to decision on that same date; and

WHEREAS, Community Board 4, Manhattan, recommends approval of this application; and

WHEREAS, Commissioner Ottley-Brown and Commissioner Scibetta performed inspections of the site and surrounding neighborhood; and

WHEREAS, the subject site is located on the

southeast corner of West 33rd Street and 11th Avenue, in a C6-4 zoning district and in the Special Hudson Yards District, in Manhattan; and

WHEREAS, the site has approximately 228 feet of frontage on West 33rd Street, 234 feet of frontage on 11th Avenue, 50,167 square feet of lot area, and will be occupied by a 71-story mixed-use building in which the PCE will be located; 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) permits a PCE located on the roof of a commercial building or commercial portion of a mixed-use building, provided the following findings are made:

- (1) that such *use* shall be an incidental part of a permitted *physical culture or health establishment* located within the same *commercial or mixed building*;
- (2) that such *use* shall be open and unobstructed to the sky;
- (3) that such *use* shall be located on a roof not less than 23 feet above *curb level*;
- (4) that the application for such *use* shall be made jointly by the owner of the

1 Words in *italics* are defined in Section 12-10 of the Zoning Resolution.

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building and the operator of such physical culture or health establishment; and

- (5) that the Board shall prescribe appropriate controls to minimize adverse impacts on the surrounding area, including but not limited to, requirements for the location, size and types of signs, limitations on the manner and/or hours of operation, shielding of floodlights, adequate screening, and the control of undue noise including the amplification of sound, music or voices;

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

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 applicant submits that the proposed PCE will occupy 42,570 square feet of floor area at the subject site, with 770 square feet of floor area on the first floor with the PCE entrance, elevators, and a juice bar; 21,061 square feet of floor area on the fourth floor with a cycling studio, group fitness area,

strength and cardio areas, a reception lobby, offices, and locker rooms; 18,136 square feet of floor area on the fifth floor with an indoor swimming pool, plunge pool and pool areas, areas for yoga and Pilates, a café, and an outdoor terrace with an outdoor swimming pool; and, 2,603 square feet of floor area on the sixth floor with a fitness area, cabanas, and office space; and

WHEREAS, the applicant represents that the proposed PCE will operate as “Equinox” with the following hours of operation: Monday through Friday, 5:00 a.m. to 11:30 p.m.; Saturday and Sunday, 7:00 a.m. to 10:00 p.m.; use of the outdoor terrace will be limited to PCE patrons and will operate from Memorial Day to October, from sunrise to 11:00 p.m.; and

WHEREAS, the applicant provided evidence that the PCE space will provide sound attenuation measures to ensure noise levels in other portions of the building do not exceed 45 dBA; specifically, the applicant proposes to maintain a closed window condition by providing an alternate means of ventilation; limiters will be used on any outdoor music equipment; floating floors and jack slab construction will be utilized in areas beneath the strength area, group fitness area, and cycling studio; and, the outdoor terrace will have a restricted season with limited hours, outdoor music and gatherings will be permitted only between 10:00 a.m. and 8:00 p.m.; and

WHEREAS, the applicant represents that the PCE use will neither impair the essential character nor the future use or development of the surrounding area because the applicant anticipates the PCE will be an asset to the surrounding area and new Hudson Yards development; and

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

WHEREAS, the applicant represents that the PCE will contain facilities for the provision of physical improvement utilizing exercise equipment, individual and group fitness training, and swimming pools; and

WHEREAS, accordingly, 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 applicant states that the PCE use to be located on the roof portion of the subject site, a swimming pool and lounge area, is an incidental part of the PCE; is open and unobstructed to the sky; is not less than 23 feet above curb level; and, the applicant submitted affidavits demonstrating that this application has been made jointly by both the operator of the PCE and the owner of the building; and

WHEREAS, accordingly, the Board finds that the subject PCE use located on the fifth-floor terrace is consistent with those eligible pursuant to ZR § 73-36(b)

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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 submits that the PCE space will be protected with a wet sprinkler system and an approved interior fire alarm system—including area smoke detectors, manual pull stations at each required exit, local audible and visual alarms, and a connection of the interior fire alarm system to an FDNY-approved central station—will also be installed within the PCE space; and

WHEREAS, by letter dated November 7, 2018, the Fire Department states that an application for a Place of Assembly permit has been filed and is disapproved; several fire alarm applications have been filed and are currently disapproved; the building's fire suppression systems are currently being installed and have been inspected by the Bureau's Construction, Demolition and Abatement unit and found to be satisfactory; and, the Bureau of Fire Prevention recommends that the Board, in granting a special permit, add as a condition that the applicant obtains an operating permit for the place of assembly space, as well as an approval and sign-off for the fire alarm system; an inspector from the Licensed Public Place of Assembly unit will visit the space and will issue violation orders accordingly; and

WHEREAS, the applicant represents that the PCE will not impact the privacy, quiet, light and air of the neighborhood on account that it is anticipated to draw its patronage from the surrounding area within walking distance of the PCE, and, beyond limiting the hours of use and amplification of noise on the fifth-floor terrace, the applicant proposes to integrate the lighting of the outdoor space into the exterior elements, such as the handrails, planters, swimming pool, and exterior trellis structure, and will utilize recessed floor lighting, limited wall fixtures and lanterns in seating areas; 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 that the proposed special permit use will not interfere with any pending public improvement project; and

WHEREAS, the project is classified as an Unlisted action pursuant to 6 NYCRR, Part 617.2; 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 ("EAS") CEQR No. 18BSA076M, received December 22, 2017;

and

WHEREAS, the EAS documents that the project, as proposed, would not have significant adverse impacts on Land Use, Zoning, and Public Policy; Socioeconomic Conditions; Community Activities; Open Space; Shadows; Historic and Cultural Resources; Urban Design; Natural Resources; Hazardous Materials; Infrastructure; Solid Waste and Sanitation Services; Energy; Transportation; Air Quality; Greenhouse Gas Emissions; Noise; Public Health; Neighborhood Character; or Construction Impacts; and

WHEREAS, an (E) designation (No. E-137) has been placed on the subject site for hazardous materials and noise requiring alternate means of ventilation to maintain a closed window condition and specific window/window-wall attenuation that varies based on the distance of a particular floor from street level (i.e., for the commercial floor of the subject building, window/window-wall attenuation of 32 dB(A) from 0 to 100 feet above street level, window/window-wall attenuation of 28 dB(A) from 100 to 200 feet above street level and window/window-wall attenuation of 26 dB(A) from 201 to 400 feet above street level); and

WHEREAS, on April 7, 2015 a Notice To Proceed was issued by the Office of Environmental Remediation stating that the proposed remedial action plans submitted in connection with the E-designation on the site were acceptable;

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, 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 that permitting the subject PCE space proposed on the first, fourth, fifth, and sixth floor, and fifth floor outdoor terrace of the subject building, is appropriate, with certain conditions as set forth below.

Therefore it is Resolved, that the Board of Standards and Appeals issues a 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, 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 within a C6-4 zoning district and in the Special Hudson Yards district, a physical culture establishment on portions of the first, fourth, fifth, and sixth floor, and fifth floor outdoor terrace, of a proposed 71-story mixed-use commercial and residential building, contrary to ZR §32-10;

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on condition that all work shall substantially conform to drawings filed with this application marked “October 17, 2018”– Thirteen (13) sheets; and *on further condition*:

THAT the term of the PCE grant shall expire on November 8, 2028;

THAT there shall 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 shall be as reviewed and approved by DOB;

THAT the sprinkler system shall be installed and maintained as indicated on the Board-approved plans;

THAT an approved fire alarm system—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—shall be installed and maintained within the PCE space;

THAT minimum 3-foot-wide exit pathways shall be provided leading to the required exits and such pathways shall always be maintained unobstructed, including from any equipment;

THAT a place of assembly permit shall be obtained;

THAT the fire alarm system shall be approved and signed off prior to the issuance of a certificate of occupancy;

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

THAT a certificate of occupancy indicating the subject calendar number (“BSA Cal. No. 2017-321-BZ”) shall be obtained within four (4) years, by November 8, 2022;

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, November 8, 2018.

A true copy of resolution adopted by the Board of Standards and Appeals, November 8, 2018.
Printed in Bulletin No. 46, Vol. 103.

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

