

CEQR #19-BSA-022M

APPLICANT – Sahn Ward Coschignano, PLLC, for 450 Partners LLC c/o Brookfield Properties, Inc., owner; Peloton Interactive, Inc., lessee.

SUBJECT – Application August 7, 2018 – Special Permit (§73-36) to permit the operation of a physical culture establishment (fitness facility) on a portion of the first and second floor of an existing building contrary to ZR §32-10. C6-4 Special Hudson Yards District.

PREMISES AFFECTED – 450 West 33rd Street, Block 729, Lot 9001 (aka Lot 1), 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

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THE RESOLUTION –

WHEREAS, the decision on behalf of the Department of Buildings (“DOB”), dated July 10, 2018, acting on DOB Application No. 121184725, reads in pertinent part:

Proposed physical cultural establishment is not permitted as-of-right in C6-4 zoning district per ZR 32-30, and therefore requires a special permit from the Board of Standards and Appeals pursuant to ZR 73-36; 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 and second floor of an existing 15-story plus cellar and mezzanine commercial building, contrary to ZR § 32-10; and

WHEREAS, a public hearing was held on this application on November 20, 2018, after due notice by publication in *The City Record*, and then to decision on that same date; and

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

WHEREAS, the site has approximately 302 feet of frontage, 455 feet of depth, 137,352 square feet of lot area, and is occupied by a 15-story plus cellar and

mezzanine commercial building, in which the subject PCE is to be located; and

WHEREAS, the Board has exercised jurisdiction over the subject site since December 5, 1972, when, under BSA Cal. No. 590-72-A, the Board granted an appeal of the decision of the Fire Commissioner, of Order No. 72-1634, regarding the storage of gasoline and fueling of motor vehicles on site, on condition that the 15th floor substantially comply to the drawings marked “Received October 25, 1972,” one (1) sheet, and that all laws, rules and regulations be complied with; and

WHEREAS, on October 29, 1974, under BSA Cal. No. 148-74-A, the Board granted an appeal of the decision of the Fire Commissioner, of Violation Order B-930898, regarding stair re-entry requirements, on condition that re-entry be provided on the fifth, eighth, and twelfth floors of the premises, the building substantially conform to drawings marked “Received March 11, 1974—5 Sheets,” and all laws, rules and regulations be complied with; and

WHEREAS, on May 20, 1975, under BSA Cal. No. 148-74-A, the Board corrected its October 29, 1974 resolution to reflect re-entry to be provided on the fifth, eighth, and eleventh floors on condition that the building substantially conform to drawings marked “Received March 11, 1974—5 Sheets,” and all laws, rules and regulations be complied with; and

WHEREAS, ZR § 73-36(a) provides that in C18X, 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.

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

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, the applicant represents that, 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

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 represents that the proposed PCE will occupy 25,288 square feet of floor area at the subject site, comprised of 15,761 square feet of floor area on the first floor with a treadmill studio, spin cycling studio, rowing studio, a space for yoga, flex and auxiliary exercises, a lounge, locker rooms, bathrooms, showers, mechanical spaces, and reception; and, 9,527 square feet of floor area on the second floor with an accessory retail showroom, a lounge, locker rooms with bathrooms and showers, mechanical spaces, and a laundry room; and

WHEREAS, the applicant submits that the proposed PCE will operate as “Peleton” with the following hours of operation: Monday through Friday, 5:30 a.m. to 9:45 p.m.; and, Saturday and Sunday, 7:00 a.m. to 8:00 p.m.; and

WHEREAS, the applicant provided evidence that the PCE space will provide sound mitigation measures to ensure a high level of noise isolation and vibration isolation; specifically, all of the studios will be constructed as boxes-within-boxes with floating concrete floor slabs on jack-up spring-isolators, isolated partitions, full-height secondary wall enclosures, noisebarrier ceilings, acoustic column enclosures, sound absorbing wall and ceiling treatments, rubber flooring, acoustically rated doors with a rating of STC 54+, and, minimized through-penetrations for ducts and lighting in the isolated ceiling; 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 PCE is compatible with the mixed-use nature of the neighborhood, which is characterized by offices, residences, industrial and utility, transportation, and mixed-use buildings, and the applicant does not anticipate the PCE to draw any additional traffic to the area; 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 classes, instruction and programs for physical improvement utilizing instructed treadmill, spin cycle, and row machine exercises, and exercise classes; and

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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 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 be installed within the PCE space; and

WHEREAS, by letter dated November 17, 2018, the Fire Department states that it has no objection to this application and confirmed that the building has fire alarm, sprinkler and standpipe systems, all of which were tested satisfactory and have current permits; an application for an operating permit (PA 123456369) has been filed with the DOB and is awaiting approval pending the Board's decision; and, once granted, units of the Bureau of Fire Prevention will be notified and perform the required inspections; 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 located entirely within an existing building, and the proposed isolated acoustic construction will prevent sound and vibration from impacting adjoining tenants and properties; 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, 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

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 Checklist action discussed in the CEQR Checklist No. 19-BSA-022M, dated August 9, 2018; and

WHEREAS, based upon its review of the record, the Board finds that the requested special permit, permitting the proposed PCE space on the first and second floor, is appropriate, with certain conditions as set forth below.

Therefore it is Resolved, that the Board of Standards and Appeals issues 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, 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, and second floor of an existing 15-story plus cellar and mezzanine commercial building, contrary to ZR § 3210; *on condition* that all work shall substantially conform to drawings filed with this application marked Received July 26, 2018"—Fourteen (14) sheets; and *on further condition*:

THAT the term of the PCE grant shall expire on November 20, 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 the above conditions shall appear on the certificate of occupancy;

THAT a certificate of occupancy, indicating this approval and calendar number ("BSA Cal. No. 2018133-BZ") shall be obtained within four (4) years, by November 20, 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 20, 2018.

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A true copy of resolution adopted by the Board of Standards and Appeals, November 20, 2018.

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To Applicant

Fire Com'r.

Borough Com'r.

