

2018-143-BZ

CEQR #19-BSA-030M

APPLICANT – Rothkrug Rothkrug & Spector LLP, for 13 West 13 Apartments Corp., owner; FitHouse 20 W. 14th St., LLC, lessee.

SUBJECT – Application August 30, 2018 – Special Permit (§73-36) to permit the operation of a Physical Cultural Establishment (*FitHouse*) to be located within portions of the cellar and first floor of the north wing of an existing six story mixed use building contrary to ZR §32-10. C6-2M and C6-2 zoning districts.

PREMISES AFFECTED – 20 West 14th Street, Block 577, Lot 30, Borough of Manhattan.

COMMUNITY BOARD #2M

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 August 22, 2018, acting on DOB Alteration Type I Application No. 123550291, reads in pertinent part:

“ZR 32-10, ZR 73-36; BSA: Proposed ‘Physical Culture Establishment’ is not permitted As-Of-Right per section ZR 32-10 and is referred to the Board of Standards and Appeals for a special permit under ZR 73-36;” and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03 to legalize, on a site located partially within a C6-2 zoning district and partially within a C6-2M zoning district, a physical culture establishment (“PCE”) on a portion of the cellar level and first floor (located entirely within the C6-2M portion of the lot) of an existing six- (6) story plus cellar and sub cellar mixed-use residential and commercial building, contrary to ZR § 32-10; and

WHEREAS, a public hearing was held on this application on March 19, 2019, after due notice by publication in *The City Record*, with continued hearings on May 21, 2019, and October 3, 2019, and then to decision on that date; and

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

WHEREAS, Community Board 5, Manhattan, recommended approval of this application; and

WHEREAS, the Board was also in receipt of testimony from residential tenants of the subject building in opposition to this application, citing concerns over noise and vibration disturbance caused by the operation of the PCE; and

WHEREAS, the subject site is bounded by West

14th Street to the north and West 13th Street to the south, between Avenue of the Americas and Fifth Avenue, partially within a C6-2 zoning district and partially within a C6-2M zoning district, in Manhattan; and

WHEREAS, the site has approximately 50 feet of frontage along West 14th Street, 125 feet of frontage along West 13th Street, 18,070 square feet of lot area and is occupied by an existing six- (6) story plus cellar and sub cellar mixed-use residential and 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*¹ 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

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

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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 PCE occupies 2,488 square feet of floor space on a portion of the cellar level with two (2) exercise rooms, and spaces for lockers, showers and restrooms; and 3,033 square feet of floor area on a portion of the first floor with an exercise room, and spaces for reception, retail, lockers, showers and restrooms; and

WHEREAS, the PCE opened on January 28, 2019, as "Fithouse," and operates daily, from 6:00 a.m. to 10:00 p.m.; and

WHEREAS, while noise abatement measures are provided in the PCE space to ensure that the sound level in other portions of the building do not exceed 45dBA, including sound emanating from any sound system, the exercise studios of the PCE are constructed with sound attenuating acoustical wall partitions and batt insulation, the applicant provided evidence of acoustical inspections and testing performed over several periods to identify and resolve excessive noise and vibration impacts associated with the operation of

the PCE; and

WHEREAS, in response to recommendations made by the applicant's acoustical consultant, the PCE installed and maintains a sound limiter on the exercise studio music and microphone sound levels and represents that the sound attenuation measures maintained in the PCE space resolved complaints over noise and vibration; 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 located in an existing commercial space on the ground floor and cellar level of an existing building, typical of developments located in the surrounding 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 submits that the PCE will contain 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 not impact the privacy, quiet, light and air of the neighborhood and will maintain a sound limiter on the studio music and microphone levels so as to cause no disturbance to neighbors as a result of noise or vibration; and

WHEREAS, the applicant states that a sprinkler system and an approved 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 to an FDNY-approved central station—will be maintained within the PCE space; and

WHEREAS, by letter dated March 9, 2019, the Fire Department stated that an application was filed with DOB for a new fire alarm system (Alt II 123488109) in the tenant space, and the Department requires a fire alarm system to be installed; the second means of egress from the tenant space is through the residential portion of the premises to West 13th Street at the cellar and first floors; the application was disapproved and the Department will assist the applicant to expedite for approval; the premises have a sprinkler system that has been inspected and tested satisfactory to Department standards; and, the

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Department has no objection to the Board rendering a decision on the application as the Bureau of Fire Prevention will inspect these premises; and

WHEREAS, accordingly, 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, in addition, the Board finds that the operation of the PCE will not interfere with any 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

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-030M, dated September 7, 2018; and

WHEREAS, based upon its review of the record, the Board finds that the requested special permit, legalizing the PCE on a portion of the cellar level and first 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 legalize, on a site located partially within a C6-2 zoning district and partially within a C6-2M zoning district, the operation of a proposed physical culture establishment on a portion of the cellar level and first floor of an existing six- (6) story plus cellar and sub cellar mixed-use residential and commercial building, contrary to ZR § 32-10; *on condition* that all work shall substantially conform to drawings filed with this application marked "Received May 2, 2019"-Six (6) sheets; and *on further condition*:

THAT the term of the PCE grant will expire on January 28, 2029;

THAT the PCE shall be operated and maintained so as to cause no disturbance to neighbors as a result of noise or vibration;

THAT there will be no change in ownership or operating control of the PCE without prior application to and approval from the Board;

**A true copy of resolution adopted by the Board of Standards and Appeals, October 3, 2019.
Printed in Bulletin No. 30, Vol. 104.**

Copies Sent

To Applicant

Fire Com'r.

Borough Com'r.

THAT accessibility shall be provided pursuant to the standards set forth in applicable accessibility laws, including but not limited to Chapter 11 of the NYC Building Code, the 2009 American National Standards Institute (ANSI) A117.1 and Title III of the Americans with Disabilities Act, as reviewed and approved by DOB;

THAT a sprinkler system and an approved 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 to an FDNY-approved central station—shall be maintained as indicated on the Board-approved plans;

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, also referencing this approval and calendar number ("BSA Cal. No. 2018-143-BZ"), shall be obtained within one (1) year, by October 3, 2020;

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, October 3, 2019.

