

2018-174-BZ

CEQR #19-BSA-056M

APPLICANT – Rothkrug Rothkrug & Spector LLP, for A & L 1440, LLC, owner; 305 Fitness Studio 3rd Avenue LLC, lessee.

SUBJECT – Application November 13, 2018 – Special Permit (§73-36) to permit the operation of a Physical Culture Establishment (*305 Fitness*) to occupy the cellar, first and second floors of an existing two-story building contrary to ZR §32-10. C1-9R8B zoning district.

PREMISES AFFECTED – 1440 3rd Avenue, Block 1510, Lot 38, Borough of Manhattan.

COMMUNITY BOARD #8M

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 Deputy Borough Commissioner, dated October 10, 2018, acting on Department of Buildings (“DOB”) Application No. 123376444, reads in pertinent part:

Proposed Physical Culture Establishment is not [...] permitted as-of-right per ZR 32-31.

Secure BSA’s approval per 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 C1-9 zoning district and partially within an R8B zoning district, a physical culture establishment (“PCE”) on portions of the cellar level, first floor and second floor of an existing two- (2) story plus cellar commercial building, contrary to ZR § 32-10; and

WHEREAS, a public hearing was held on this application on April 23, 2019, after due notice by publication in *The City Record*, and then to decision on that same date; and

WHEREAS, Community Board 8, Manhattan, recommends approval of this application; and

WHEREAS, the Board was in receipt of one (1) form letter in support of this application; and

WHEREAS, the subject site is located on the west side of Third Avenue, between East 81st Street and East 82nd Street, partially within a C1-9 zoning district and partially within an R8B zoning district, in Manhattan; and

WHEREAS, the site has approximately 26 feet of frontage along Third Avenue, 102 feet of depth, 2,609 square feet of lot area and is occupied by a two- (2) story plus cellar commercial building; and

WHEREAS, the applicant represents that the subject lot extends approximately two (2) feet into the R8B zoning district and the PCE is located entirely within the C1-9 portion of the subject site; 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

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

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

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 810 square feet of floor space in the cellar with storage space; 2,350 square feet of floor area on the first floor with the PCE entrance, reception area, DJ booth, exercise studio and restroom; and, 905 square feet of floor area on the second floor with men's and women's restrooms, lockers, a waiting space and an office; and

WHEREAS, the PCE opened in November 2018 as "305 Fitness," with the following hours of operation: Monday through Friday, 6:00 a.m. to 9:00 p.m.; Saturday, 9:30 a.m. to 3:00 p.m.; and, Sunday, 9:30 a.m. to 5:30 p.m.; and

WHEREAS, the applicant states that, while the PCE is the only use in the subject commercial building, noise abatement measures have been installed in the PCE space to ensure that sound levels emanating from the PCE, including that from any sound system, do not exceed 45 dBA; specifically, the exercise studio is isolated with sound attenuating materials in the flooring, ceiling, party wall and interior partitions of the PCE, utilizing flexible acoustic sealants and sound absorbing batt insulation; 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 a commercial zoning district, within a commercial building and is the only use within the subject building; 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 anticipates that the PCE will pose no potential hazards and will be an asset to the surrounding area, providing a desirable use to the local community; 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 connection of the interior fire alarm to an FDNY-approved central station —will be installed and maintained within the PCE space; and

WHEREAS, by letter dated April 5, 2019, the Fire Department states that a public assembly application is not required and due to the number of persons, a fire alarm system is also not required for these premises; a sprinkler application has been filed and the system was tested by the installer and passed; the Bureau's Fire Suppression Unit ("FSU") will conduct an inspection of the new sprinkler system; the applicant may choose to install a fire alarm system voluntarily in the entire premises and if so the Department has no objection to the installation; and, that the Fire Department has no objection to the Board's rendering a decision on this application, as the Bureau of Fire Prevention will inspect these premises and enforce any outstanding violations; 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-056M, dated November 13, 2018; and

WHEREAS, the term of the grant has been reduced to reflect the period the PCE operated without approval from the Board;

WHEREAS, based upon its review of the record,

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the Board finds that the requested special permit, legalizing the PCE on portions of the cellar level, first floor 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 legalize, on a site located partially within a C1-9 zoning district and partially within an R8B zoning district, the operation of a physical culture establishment on the cellar level, first floor and second floor of an existing two- (2) story plus cellar commercial building, contrary to ZR § 32-10; *on condition* that all work shall substantially conform to drawings filed with this application marked “Received February 5, 2019”-Five (5) sheets; and *on further condition*:

THAT the term of the PCE grant will expire on November 1, 2028;

THAT the hours of operation shall be: Monday through Friday, 6:00 a.m. to 9:00 p.m.; Saturday, 9:30 a.m. to 3:00 p.m.; and, Sunday, 9:30 a.m. to 5:30 p.m.

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

THAT approved fire alarm—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—and sprinkler system shall be installed and 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. 2018-174-BZ”), shall be obtained within one (1) year, by April 23, 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

**A true copy of resolution adopted by the Board of Standards and Appeals, April 23, 2019.
Printed in Bulletin Nos. 17-18, Vol. 104.**

Copies Sent

**To Applicant
Fire Com'r.
Borough Com'r.**

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, April 23, 2019.

