

2018-37-BZ
CEQR #18-BSA-109M

APPLICANT – Rothkrug Rothkrug & Spector LLP, for ERY North Tower RHC Tenant LLC, owner.

SUBJECT – Application March 13, 2018 – Special Permit (§73-36) to permit the operation of a physical culture establishment (*Equinox Hotel Spa*) to be located on the fifth floor of a 72-story mixed-use building contrary to ZR §32-10. C6-4 Hudson Yards Special District.

PREMISES AFFECTED – 560 West 33rd Street aka 35 Hudson Yards, 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, and Commissioner Sheta.....4
Negative.....0

Absent: Commissioner Scibetta.....1

THE RESOLUTION –

WHEREAS, the decision of the Department of Buildings (“DOB”), dated February 27, 2018, acting on New Building Application No. 121192618, reads in pertinent part:

“Proposed Physical Culture Establishment (massage) at floors 5th floor . . . 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, in an C6-4 zoning district and the Special Hudson Yards District, the operation of a physical culture establishment on portions of the first floor and fifth floor of the subject building, contrary to ZR § 32-10; and

WHEREAS, a public hearing was held on this application on August 21, 2018, after due notice by publication in *The City Record*, and then to decision on August 21, 2018; and

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

WHEREAS, the subject site is located on the southeast corner of West 33rd Street and 11th Avenue, in an C6-4 zoning district and the Special Hudson Yards District, in Manhattan; and

WHEREAS, the subject site has approximately 175 feet of frontage along West 33rd Street, 189 feet of frontage along 11th Avenue, is part of a larger zoning lot with 570,000 square feet of lot area and is occupied by a 72-story mixed-use building under construction; 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
- (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

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WHEREAS, the subject PCE will have an entrance on the first floor and will occupy 4,554 square feet of floor area on the fifth floor, including reception and retail, a waiting area, a salon, saunas, a meditation-pod room, treatment rooms, post-treatment pods, a relaxation room, showers, locker rooms, restrooms and a cryotherapy room; and

WHEREAS, the PCE will be a spa operated by Equinox Hotel, with the following hours of operation: 9:00 a.m. to 9:00 p.m., daily; and

WHEREAS, the applicant represents that the PCE use is consistent with the vibrant mixed-use area in which it is located, that the PCE use will be fully contained within the envelope of a new building and that the PCE use will not generate noise because of its focus on creating a relaxing environment; 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 the practice of massage by New York State licensed masseurs and masseuses; 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 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-109M, dated March 13, 2018; 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.

A true copy of resolution adopted by the Board of Standards and Appeals, August 21, 2018.

Printed in Bulletin No. 35, Vol. 103.

Copies Sent

To Applicant

Fire Com'r.

Borough Com'r.

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 an C6-4 zoning district and the Special Hudson Yards District, the operation of a physical culture establishment on portions of the first floor and fifth floor of the subject 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 May 8, 2018"—Six (6) sheets; and *on further condition:*

THAT this grant shall be limited to a term of ten (10) years, expiring August 21, 2028;

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 all massages shall be performed only by New York State licensed massage therapists;

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 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 August 21, 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, August 21, 2018.

