

**2019-62-BZ**

**CEQR #19-BSA-108M**

APPLICANT – Rothkrug Rothkrug & Spector LLP, for Remainderman 435 Hudson LLC, owner; S10 Training, lessee.

SUBJECT – Application March 22, 2019 – Special Permit (§73-36) to permit the operation of a Physical Cultural Establishment (S10) to be located within the cellar of an existing commercial building with a small lobby entrance on the first floor contrary to ZR §42-10. M1-5(MX-6) zoning district.

PREMISES AFFECTED – 435 Hudson Street, Block 602, Lot 68, 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 February 21, 2019, acting on DOB Alteration Type I Application No. 123418266, reads in pertinent part:

“Proposed ‘physical culture establishment’ in M1-5 & MX-6 zoning districts is contrary to ZR 32-10 and requires [a] special permit from The New York City Board of Standards and Appeals (BSA) per ZR 73-36;” and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03 to permit, on a site located within an M1-5 zoning district, a physical culture establishment (“PCE”) on portions of the cellar level and first floor of an existing nine story with cellar and mezzanine commercial building, contrary to ZR § 42-10; and

WHEREAS, a public hearing was held on this application on October 22, 2019, after due notice by publication in *The City Record*, with a continued hearing on November 19, 2019, and then to decision on that date; and

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

WHEREAS, Community Board 2, Manhattan, recommends approval of this application; and

WHEREAS, the subject site is located on the west side of Hudson Street, between Leroy Street and Morton Street, within an M1-5 zoning district, in Manhattan; and

WHEREAS, the site has approximately 200 feet of frontage along Hudson Street, 120 feet of frontage along Leroy Street and, 125 feet of frontage along Morton Street, 24,500 square feet of lot area and is occupied by an existing nine story with cellar and mezzanine 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* 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

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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 will occupy 6,898 square feet of floor space on a portion of the cellar level with spa rooms, an exercise area, restrooms, changing rooms, lockers and showers; and 350 square feet of floor area on the first floor with the PCE entrance; and

WHEREAS, the PCE is proposed to operate as “S10 Training” and proposes to operate daily, from 7:00 a.m. to 10:00 p.m.; and

WHEREAS, the applicant states that, while the PCE activities will occur within the cellar of a commercial building, separated from the first floor with eight-inch concrete ceilings, sound attenuation measures will be installed and maintained within the PCE space to minimize sound and vibration disturbances caused by the operation of the PCE, including rubber flooring in the PCE activity areas and isolation-mounted speakers; 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 will be located in an area that has been used for commercial uses; 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, as well as facilities for the practice of massage by New York State-licensed masseurs or 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 not impact the privacy, quiet, light and air of the neighborhood and anticipates that the PCE will represent an asset to the surrounding area; and

WHEREAS, the applicant states that a sprinkler system is installed and maintained within the PCE space and an approved fire alarm system—including a connection of the interior fire alarm system to an FDNY-approved central station—will be installed and maintained within the PCE space; and

WHEREAS, by letter dated October 21, 2019, the Fire Department states that these premises are protected by a wet standpipe and sprinkler system, for which a hydrostatic pressure test was performed and tested satisfactory according to the Fire Department rules and regulations; a Public Assembly application must be filed with the Department of Buildings borough office prior to occupancy of the space; based on the foregoing, the Department has no objection to the application, and the Bureau of Fire Prevention will continue to inspect these premises and enforce all applicable rules and regulations; 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-108M, dated March 25, 2019; and

WHEREAS, based upon its review of the record, the Board finds that the requested special permit, to permit the PCE on portions 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 permit, on a site located within an M1-5 zoning district, the operation of a physical culture establishment on portions of the cellar level and first floor of an existing nine story with cellar and

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mezzanine commercial building, contrary to ZR § 42-10; *on condition* that all work shall substantially conform to drawings filed with this application marked “Received November 1, 2019”- (5) sheets; and *on further condition*:

THAT the term of the PCE grant will expire on November 19, 2029;

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 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 manual pull stations at each required exit, area smoke detectors, local audible and visual alarms and connection of the interior fire alarm system to an FDNY-approved central station—shall be maintained as indicated on the Board-approved plans;

THAT minimum three 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. 2019-62-BZ”), shall be obtained within four years, by November 19, 2023;

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 19, 2019.

**A true copy of resolution adopted by the Board of Standards and Appeals, November 19, 2019.**

**Printed in Bulletin Nos. 45-47, Vol. 104.**

**Copies Sent**

**To Applicant**

**Fire Com'r.**

**Borough Com'r.**

