

206-13-BZ

CEQR #14-BSA-002M

APPLICANT – Fried Frank Harris Shriver and Jacobson LLP, for 605 West 42nd Owner LLC, owner.
SUBJECT – Application July 12, 2013 – Special Permit (§73-36) to allow a physical culture establishment within an existing building. C6-4 zoning district.

PREMISES AFFECTED – 605 West 42nd Street, eastern portion of the city block bounded by West 42nd St, West 43rd Street, 11th Avenue and 12th Avenue, Block 1090, Lot 29, 23, 7501, Borough of Manhattan.

COMMUNITY BOARD #4M

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5
Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Executive Zoning Specialist of the Department of Buildings (“DOB”), dated June 6, 2013, acting on DOB Application No. 121331120, reads in pertinent part:

Proposed physical culture establishment, as defined by ZR 12-10, is contrary to ZR 32-10 and ZR 32-31; and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03, to permit, on a site located in C6-4 zoning district within the Special Clinton District, the operation of a physical culture establishment (“PCE”) in portions of the cellar, first, and third floor of a 60-story mixed residential and commercial building, contrary to ZR §§ 32-10 and 32-31; and

WHEREAS, a public hearing was held on this application on November 19, 2013, after due notice by publication in *The City Record*, and then to decision on December 17, 2013; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan, Commissioner Hinkson, Commissioner Montanez, and Commissioner Ottley-Brown; and

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

WHEREAS, the subject site is located on the west side of Eleventh Avenue between West 42nd Street and West 43rd Street, within a C6-4 zoning district, within the Special Clinton District; and

WHEREAS, the site has 575 feet of frontage along West 43rd Street, 200.84 feet of frontage along Eleventh Avenue, 579 feet of frontage along West 42nd Street, and 115,881 sq. ft. of lot area; and

WHEREAS, under construction at the site is a 60-story mixed residential and commercial building; and

WHEREAS, the PCE is proposed to occupy a total of 59,680 sq. ft. of floor space, 20,457 sq. ft. of floor space in the cellar, 2,166 sq. ft. on the first floor, 19,268

sq. ft. of floor area on the third floor, and 17,788 sq. ft. of outdoor space with two swimming pools at the third floor above the second floor roof; and

WHEREAS, the PCE will be operated by the owner of the building, 605 West 42nd Owner, LLC; and

WHEREAS, the applicant represents that the services at the PCE include facilities for instruction and programs for physical improvement; the applicant states that massages will not be performed at the PCE; 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 determined to be satisfactory; and

WHEREAS, the PCE will not interfere with any pending public improvement project; and

WHEREAS, accordingly, the Board finds that this action will neither 1) alter the essential character of the surrounding neighborhood; 2) impair the use or development of adjacent properties; nor 3) be detrimental to the public welfare; 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

WHEREAS, the Board also finds that the PCE supports the general purposes of the Special Clinton District, which include strengthening the residential character of the community, in accordance with ZR § 96-00; and

WHEREAS, in accordance with ZR § 73-36(b), the Board may permit outdoor PCE uses, provided that additional findings are made; and

WHEREAS, at hearing, the Board requested additional information regarding the uses adjacent to the proposed outdoor swimming pools and directed the applicant to identify limited hours for such use; and

WHEREAS, in response, the applicant submitted an amended statement and a site plan detailing the adjacent uses, which includes two street frontages, terraces, and common residential spaces (tenant lounge and recreation area) within the building; and

WHEREAS, in addition, the applicant states that use of the pools will be limited to daily from 6:00 a.m. to 7:00 p.m. from Columbus Day to Memorial Day, and daily from 6:00 a.m. to 9:00 p.m. from Memorial Day to Columbus Day; the applicant notes that it does not propose to limit the hours of use of the outdoor areas adjacent to the pools when the PCE is closed; and

WHEREAS, the applicant represents that its proposed outdoor pools are consistent with the findings required under ZR § 73-36(b); and

WHEREAS, the Board agrees that the proposed outdoor PCE use is in accordance with ZR § 72-36(b); and

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WHEREAS, therefore, the Board has determined that the evidence in the record supports the requisite findings pursuant to ZR §§ 73-36 and 73-03; and

WHEREAS, the project is classified as an Unlisted action pursuant to 6 NYCRR Part 617.2; and

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement, CEQR No. 14BSA002M, dated September 23, 2013; and

WHEREAS, the EAS documents that the operation of the PCE would not have significant adverse impacts on Land Use, Zoning, and Public Policy; Socioeconomic Conditions; Community Facilities and Services; Open Space; Shadows; Historic Resources; Urban Design and Visual Resources; Neighborhood Character; Natural Resources; Hazardous Materials; Waterfront Revitalization Program; Infrastructure; Solid Waste and Sanitation Services; Energy; Traffic and Parking; Transit and Pedestrians; Air Quality; Noise; Construction Impacts; and Public Health; and

WHEREAS, no other significant effects upon the environment that would require an Environmental Impact Statement are foreseeable; and

WHEREAS, the Board has determined that the proposed action will not have a significant adverse impact on the environment.

Therefore it is Resolved, that the Board of Standards and Appeals issues a Negative Declaration prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617 and § 6-07(b) of the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR §§ 73-36 and 73-03, to permit, on a site located in C6-4 zoning district within the Special Clinton District, the operation of a physical culture establishment ("PCE") in portions of the cellar, first, and third floor of a 60-story mixed residential and commercial building, contrary to ZR §§ 32-10 and 32-31; *on condition* that all work shall substantially conform to drawings filed with this application marked "Received September 23, 2013" – Five (5) sheets; and *on further condition:*

THAT the term of this grant will expire on December 17, 2023;

A true copy of resolution adopted by the Board of Standards and Appeals, December 17, 2013.

Printed in Bulletin No. 51, Vol. 98.

Copies Sent

To Applicant

Fire Com'r.

Borough Com'r.

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

THAT the hours of operation for the outdoor pools will be limited to daily from 6:00 a.m. to 7:00 p.m. from Columbus Day to Memorial Day, and daily from 6:00 a.m. to 9:00 p.m. from Memorial Day to Columbus Day; however, the hours of use of the outdoor areas adjacent to the pools will not be limited under this grant;

THAT the above conditions will appear on the Certificate of Occupancy;

THAT Local Law 58/87 compliance will be as reviewed and approved by DOB;

THAT fire safety measures will be installed and/or maintained as shown on the Board-approved plans;

THAT substantial construction will be completed in accordance with ZR § 73-70;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction 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, December 17, 2013.

