

**226-10-BZ**

**CEQR #11-BSA-042M**

APPLICANT – Rothkrug Rothkrug & Spector LLP, for Montbatten Equities, LLP, owner; Equinox Fitness, lessee.

SUBJECT – Application December 10, 2010 – Special Permit (§73-36) to allow a Physical Culture Establishment (*Equinox Fitness*) on the first, ninth and tenth floors of an existing 10-story mixed-use building; Amendment to a prior variance (§72-21) to reflect the proposed establishment. M1-5 zoning district.

PREMISES AFFECTED – 405/42 Hudson Street, southwest corner of Hudson and Leroy Streets, Block 601, Lot 58, Borough of Manhattan.

**COMMUNITY BOARD #2M**

**APPEARANCES –**

For Applicant: Eric Palatnik.

**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 Montanez .....5  
Negative:.....0

**THE RESOLUTION –**

WHEREAS, the decision of the Manhattan Borough Superintendent, dated January 25, 2011, acting on Department of Buildings Application No. 120527778, reads in pertinent part:

“ZR 42-10. Proposed physical culture establishment is not permitted in M1-5 zone and requires special permit from the Board of Standards and Appeals 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, the legalization of a physical culture establishment (PCE) at portions of the first, ninth, and tenth floors of a ten-story mixed-use commercial/residential building, contrary to ZR § 42-10; and

WHEREAS, the applicant filed a companion case under BSA Calendar No. 606-75-BZ, to allow an amendment to a prior variance to reflect the existing conditions within the commercial space at the subject site and to permit the renovation of the health club facility for operation as part of the subject PCE; that application was granted on April 5, 2011; and

WHEREAS, a public hearing was held on this application on February 15, 2011 after due notice by publication in *The City Record* and then to decision on April 5, 2011; and

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

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

WHEREAS, the subject site is located on a through lot bounded by Leroy Street to the north,

Hudson Street to the east, and Clarkson Street to the south, within an M1-5 zoning district; and

WHEREAS, the site is occupied by a ten-story mixed-use commercial/residential building; and

WHEREAS, the Board has exercised jurisdiction over the subject site since July 20, 1976 when, under BSA Cal. No. 606-75-BZ, the Board granted a variance to permit the conversion of the existing building from manufacturing use to residential use with a health facility and restaurant on the ninth and tenth floors, and commercial space on a portion of the first floor; and

WHEREAS, on July 20, 1976, under BSA Cal. No. 607-75-A, the Board also granted an administrative appeal of a Department of Buildings determination, to allow variances from the Multiple Dwelling Law required for the proposed residential uses; and

WHEREAS, the proposed PCE occupies 29,441 sq. ft. of floor area on portions of the first, ninth, and tenth floors of the subject building; and

WHEREAS, the PCE will be operated by Equinox Fitness; and

WHEREAS, the proposed hours of operation are: Monday through Thursday, from 5:30 a.m. to 11:00 p.m.; Friday, from 5:30 a.m. to 10:00 p.m.; and Saturday and Sunday, from 7:00 a.m. to 9:00 p.m.; and

WHEREAS, the applicant represents that the services at the PCE include facilities for instruction and programs for physical improvement; and

WHEREAS, at hearing, the Board directed the applicant to clarify the noise attenuation measures that are proposed for the subject building; and

WHEREAS, in response, the applicant states that the following noise attenuation measures will be undertaken at the site: (1) all slab penetrations between the first floor and second floor will be tightly sealed; (2) a suspended gypsum board ceiling will be installed above the PCE space at the first floor; (3) the group fitness studio and cycling studio at the first floor will be constructed of isolated partitions; (4) a one-inch thick rubber flooring will be provided throughout the strength area at the first floor; (5) the partitions surrounding the mechanical room at the first floor will comprise two layers of gypsum board on either side of metal studs with batt insulation in the stud cavities; (6) an isolated concrete floor will be installed in the cardio room on the ninth floor; and (7) one-inch thick resilient floor tile will be installed throughout the open fitness area on the ninth and tenth floors; and

WHEREAS, 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 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

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WHEREAS, the PCE will not interfere with any pending public improvement project; 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, 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 Board notes that the PCE has been in operation by Equinox Fitness since January 1, 2011, without a special permit; and

WHEREAS, accordingly, the Board has determined that the term of the grant shall be reduced for the period of time between January 1, 2011 and the date of this grant; 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. 11BSA042M, dated December 23, 2010; 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 within an M1-5 zoning district, the legalization of a physical culture establishment on

portions of the first, ninth and tenth floors of a ten-story mixed-use commercial/residential building, contrary to ZR § 42-10; *on condition* that all work shall substantially conform to drawings filed with this application marked "Received December 10, 2010"- 2 sheets and "Received March 2, 2011"- 4 sheets; and *on further condition*:

THAT the term of this grant shall expire on January 1, 2021;

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 by New York State licensed massage therapists;

THAT the following noise abatement measures shall be installed to insure that the sound level in the residential portions of the building do not exceed 45 dBA: (1) all slab penetrations between the first floor and second floor will be tightly sealed; (2) a suspended gypsum board ceiling will be installed above the PCE space at the first floor; (3) the group fitness studio and cycling studio at the first floor will be constructed with isolated partitions; (4) a one-inch thick rubber flooring will be provided throughout the strength area at the first floor; (5) the partitions surrounding the mechanical room at the first floor will comprise two layers of gypsum board on either side of metal studs with batt insulation in the stud cavities; (6) an isolated concrete floor will be installed in the cardio room on the ninth floor; and (7) one-inch thick resilient floor tile will be installed throughout the open fitness area on the ninth and tenth floors;

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

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

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 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 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 5, 2011.

**A true copy of resolution adopted by the Board of Standards and Appeals, April 5, 2011.**  
**Printed in Bulletin No. 15, Vol. 96.**

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