

**272-07-BZ**

**CEQR #08-BSA-038M**

APPLICANT – Ellen Hay, Wachtel & Masyr, LLP, for Amsterdam & 76<sup>th</sup> Associates, owner; Equinox 76<sup>th</sup> Street, Inc., lessee.

SUBJECT – Application November 28, 2007 – Special Permit (§73-36) to allow the proposed Physical Culture Establishment on the cellar, ground, and second floors in a mixed-use building under construction. The proposal is contrary to section 32-10. C2-7A and C4-6A districts.

PREMISES AFFECTED – 344 Amsterdam Avenue, a/k/a 205 West 76<sup>th</sup> Street, west side of Amsterdam Avenue between West 76<sup>th</sup> and West 77<sup>th</sup> Streets, Block 1168, Lot 30, Borough of Manhattan.

**COMMUNITY BOARD #7M**

APPEARANCES –

For Applicant: Ellen Hay.

**ACTION OF THE BOARD** – Application granted on condition.

**THE VOTE TO GRANT** –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Hinkson, Commissioner Montanez and Commissioner Ottley-Brown.....5  
Negative:.....0

**THE RESOLUTION:**

WHEREAS, the decision of the Manhattan Borough Commissioner, dated November 20, 2007, acting on Department of Buildings Application No. 110021146, reads in pertinent part:

“Proposed physical culture establishment ‘PCE’ is not permitted as of right in C2-7A and C4-6A zoning districts. This use is contrary to section 32-10 ZR and requires a special permit from the BSA under Section 73-36;” and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03, to permit, on a site partially within a C2-7A zoning district and partially within a C4-6A zoning district, the establishment of a physical culture establishment (PCE) on portions of the cellar and first and second floors of a proposed mixed-use commercial/residential building with a 13-story and an 18-story tower, contrary to ZR § 32-10; and

WHEREAS, a public hearing was held on this application on April 15, 2008, after due notice by publication in *The City Record*, and then to decision on May 13, 2008; and

WHEREAS, the premises and surrounding area had a site and neighborhood examination by Commissioner Hinkson; and

WHEREAS, Community Board 7, Manhattan, recommends approval of this application; and

WHEREAS, the subject site is located on the west side of Amsterdam Avenue, between West 76<sup>th</sup> Street and West 77<sup>th</sup> Street; and

WHEREAS, a 13- and 18-story mixed-use

commercial/residential building is currently under construction at the site; and

WHEREAS, the PCE will occupy a total of approximately 33,209 sq. ft. of floor area; and

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

WHEREAS, the applicant represents that the services at the PCE will include cardiovascular exercise machines, weight-training equipment, and individual and group instruction; and

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

WHEREAS, at hearing, the Board asked the applicant to confirm that the floor area proposed to be occupied by the PCE was calculated as commercial floor area for zoning purposes and complies with the amount of such floor area permitted under the relevant zoning district regulations; and

WHEREAS, in response, the applicant submitted zoning calculations, which reflect that the space associated with the PCE was calculated as commercial floor area and complies with the zoning district parameters as to floor area and FAR; and

WHEREAS, the building plans reflect that noise abatement shall be provided between the PCE space and the residential portions of the building to maintain a maximum interior noise level of 45 dBA; 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

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 project is classified as an Unlisted action pursuant to 6 NYCRR Part 617.2 ak); 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.

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08BSA038M, dated November 17, 2007; 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 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 partially within a C2-7A zoning district and partially within a C4-6A zoning district, the establishment of a physical culture establishment on portions of the cellar and first and second floors of a proposed mixed-use commercial/residential building with a 13-story and an 18-story tower, contrary to ZR § 32-10; *on condition* that all work shall substantially conform to drawings filed with this application marked "Received March 18, 2008"-(6) sheets; and *on further condition*:

THAT the term of this grant shall expire on May 13, 2018;

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 a maximum interior noise level of 45 dBA shall be maintained between the PCE and adjacent residential use;

THAT the above conditions shall appear on the

Certificate of Occupancy;

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

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

THAT prior to the issuance of any permits, DOB shall review the floor area and location of the PCE for compliance with all relevant commercial use regulations;

THAT sound attenuation measures shall be installed and maintained in accordance with the 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, May 13, 2008.

**A true copy of resolution adopted by the Board of Standards and Appeals, May 13, 2008.**

**Printed in Bulletin No. 20, Vol. 93.**

**Copies Sent**

**To Applicant**

**Fire Com'r.**

**Borough Com'r.**