

APPLICANT - Rosenman & Colin, LLP, for WMP II Real Estate Limited Partnership, owner; Equinox 85th Street, Inc., lessee.

SUBJECT - Application November 9, 2001 - under Z.R. §73-36, to permit the legalization of an existing physical culture establishment, located on the second floor, and portions of the third and fourth floors of subject premises, located in a C2-8A zoning district, which requires a special permit as per Z.R. §32-10.

PREMISES AFFECTED - 1511 Third Avenue, aka 201 East 85th Street, southwest corner of block bounded by Second and Third Avenues, and 85th and 86th Streets, Block 1531, Lot 1, Borough of Manhattan.

### COMMUNITY BOARD #8M

#### APPEARANCES -

For Opposition: John Yacovone, Fire Department.

**ACTION OF THE BOARD** - Application denied.

#### THE VOTE TO GRANT-

Affirmative:.....0 Negative: Chairman Chin, Vice-Chair Babbar, Commissioner Korbey, Commissioner Caliendo and Commissioner Miele.....5

#### THE RESOLUTION-

WHEREAS, the decision of the Borough Commissioner, dated July 13, 2001 and updated November 7, 2001, acting on Alt-1. Application No. 102589110, reads:

"1. Proposed use is a physical culture establishment, which requires a special Permit from the Board of Standards and Appeals pursuant to Zoning Resolution Section73-36"; and

WHEREAS, a public hearing was held on this application on May 7, 2002, after due notice by publication in the City Record, laid over to September 10, 2002, October 22, 2002 and then to December 10, 2002 for decision; and

WHEREAS, this is an application under Z.R. §73-36, to permit partially within a C2-8A zoning district and an R8B zoning district, on a site previously before the Board, the legalization of the use of the second, third and fourth floors of an existing building as a physical culture establishment, which is contrary to Z.R. §32-10; and

WHEREAS, the premises and surrounding area had a site and neighborhood examinations by committees of the Board consisting of Chairman James Chin, Vice-Chair Satish Babbar, R.A., Commissioner Mitchell Korbey, Commissioner Peter Caliendo, former Vice-Chair Paul Bonfilio, R.A., former Chairman Gaston Silva, R.A., former Vice-Chair Robert Flahive, P.E., former Commissioner Cecil P. Joseph, and former Commissioner Rosemary Palladino; and

WHEREAS, the subject premises is a corner zoning lot with approximately 77 feet six inches of frontage on Third Avenue and 125 feet of frontage on East 85th Street; and

WHEREAS, the subject premises is currently improved with a four story and basement commercial building, with a total lot area of 10,285 square feet, currently housing 34,740 square feet of floor area; and

WHEREAS, the subject premises has been the subject of two prior Board cases filed under Calendar Nos. 34-96-BZ and 119-99-A; and

WHEREAS, under Calendar No. 34-96-BZ, the application originally sought a Special Permit to legalize the subject Physical Culture Establishment under Z.R. §73-36; and

WHEREAS, at the time of the initial application, the Board noted that the building originally had a rectangular foot print for the 1st and 2nd floor, with the 3rd and 4th floors having a smaller "L" shaped configuration, with a gap in the building's rear, existing on the 3rd and 4th floor; and

WHEREAS, upon review of the initial application, the Board noted that the building was non-complying with regards to commercial floor area in its original form, but was well under the limits for residential or community facility floor area; and

WHEREAS, before applying to the Board for the initial case, the applicant enlarged the 3rd and 4th floors to match the size of the floors below; and

WHEREAS, the Board noted that as illustrated in submitted plans by the applicant of record under Calendar No. 34-96-BZ, 2,200 square feet of floor area was added to the building on each the third and fourth floors, by the addition of an infill at the north side of the building for a total of 4,400 square feet of new floor area; and

WHEREAS, in response to the Board's inquiry regarding the infill, the applicant revised the proposal to contain 4,852 square feet of community facility floor area which the applicant contended would compensate for commercial floor area created by the infill; and

WHEREAS, through the course of hearings and site inspections by the Board, it was discovered that contrary to the applicant's representation, the space which was authorized only as Community Facility use was in fact being used by the physical culture establishment; and

WHEREAS, subsequently, the applicant was informed that since the area used for the commercial use exceeded the maximum commercial floor area for the district, as well as expanded upon the already non-complying condition, the site was no longer qualified for the aforementioned Special Permit under Z.R. §73-36; and

WHEREAS, consequently, the applicant then revised the application to request a variance under Z.R. §72-21; and

WHEREAS, upon a thorough review of the record, the Board determined that the variance application did not sufficiently demonstrate a practical difficulty on the site leading to an economic hardship in conforming with the underlying zoning regulations and therefore did not meet the requisites of Z.R. §72-21(a) and (b) and on July 18, 2000, the Board denied the variance application, Calendar Number 34-96-BZ; and

WHEREAS, under Calendar No. 119-99-A, an administrative appeal was sought to revoke a Department of Buildings Permit which permitted the construction of a rear yard encroachment on the 2nd, 3rd and 4th floors; and

WHEREAS, evidence in the record indicates that the Building Permit was granted by the Department of Buildings to allow for

this extension to be used as mechanical space; and

WHEREAS, similar to Calendar No. 34-96-BZ, through the course of hearings and site inspections by the Board, it was again discovered that contrary to the applicant's representation, the space which was authorized as mechanical space was in fact being used by the physical culture establishment; and

WHEREAS, on April 12, 2000 under Calendar #119-99-A, the Board revoked the Department of Buildings Permit allowing the rear yard structure; and

WHEREAS, the above Board determinations were adjudicated in court, the Board's findings subsequently upheld, and the rear yard structure was subsequently removed before the instant Special Permit application was heard; and

WHEREAS, by reconsideration dated August 29, 2000, the Department of Buildings accepted a new proposal by the applicant for the relocation of the new community facility floor area to the east side of the third and fourth floors, where it could be separated from the subject physical culture establishment; and

WHEREAS, the applicant's submitted plan labeled "Drawing P/E-2", dated August 20, 2002 shows that there is now a total 4,400 square feet of community facility floor area on the third and fourth floors of the building which is the exact amount required to compensate for the infill on the third and fourth floors; and

WHEREAS, under the instant special permit application, the applicant has proposed to rectify the unlawful enlargement of the Physical Culture Establishment on the third and fourth floors by providing a scheme that purports to separate a community facility tenant from the subject physical culture establishment; and

WHEREAS, the Board finds the applicant's proposal separating the subject physical culture establishment from the community facility space on the third and fourth floors to be impractical because it divides a modest-sized community facility space between the third and fourth floors instead of consolidating the use on one floor, and does not provide a workable layout which establishes a distinct separation between the physical culture establishment space and the community facility space; and

WHEREAS, the Board notes that through the course of 6 years and 3 different Board cases, the applicant has failed to retain a community facility tenant for the community facility space; and

WHEREAS, the Board also notes that the applicant has demonstrated a pattern of misrepresentation with regard to the use of the illegally built space; and

WHEREAS, in 1974, the zoning district in which the subject premises is in was rezoned from C-47 to C2-8A; and

WHEREAS, physical culture establishments are permitted by special permit requiring Board discretion, in C2-8A districts, but zoning regulations restrict their occupancy to the 1st and 2nd floors of the building; and

WHEREAS, the Board, while recognizing that commercial uses are allowed on the 3rd and 4th floors of this site, also finds that the physical culture establishment use on these floors contradict the spirit of the 1974 rezoning which sought to limit the frequency and intensity of new commercial development in this district; and

WHEREAS, therefore, based upon the pattern of misrepresentation by the applicant, the impractical layout proposed, the lack of a community facility tenant, and with consideration to the rezoning by City Planning, it is

Resolved, that the decision of the Borough Commissioner, dated July 13, 2001 and updated November 7, 2001, acting on Alt-1. Application No. 102589110 is upheld and this application is denied.

Adopted by the Board of Standards and Appeals, December 10, 2002.