

**\*CORRECTION**

This resolution adopted on March 27, 2012, under Calendar No. 4-12-BZ and printed in Volume 97, Bulletin No. 14, is hereby corrected to read as follows:

**4-12-BZ**

**CEQR #12-BSA-064M**

APPLICANT – Kramer Levin Naftalis & Frankel, LLP, for 56<sup>th</sup> and Park (NY) Owner, LLC.

SUBJECT – Application January 11, 2012 – Special Permit (§73-36) to permit the operation of a physical culture establishment (*The Wright Fit*). C5-3/C5-2.5 (MID) zoning district.

PREMISES AFFECTED – 432-440 Park Avenue, northwest corner of Park Avenue and East 56<sup>th</sup> Street, Block 1292, Lot 33, 43, 45, 46, Borough of Manhattan.

**COMMUNITY BOARD #5M**

APPEARANCES –

For Applicant: Gary R. Tarnoff.

**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 Commissioner, dated December 21, 2011, acting on Department of Buildings Application No. 120628776, reads in pertinent part:

“Proposed physical culture establishment is not permitted as of right in a C5-2.5 & C5-3 district as per ZR 32-10;” and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03, to permit, on a site located within the Special Midtown District (MID), partially within a C5-2.5 and partially within a C5-3 zoning district, the operation of a physical culture establishment (PCE) on portions of the first and sixth floors and the entire seventh and ninth floors of a proposed 82-story mixed-use residential/commercial building, contrary to ZR § 32-10; and

WHEREAS, a public hearing was held on this application on March 6, 2012, after due notice by publication in *The City Record*, and then to decision on March 27, 2012; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Vice-Chair Collins, Commissioner Hinkson, and Commissioner Montanez; and

WHEREAS, Community Board 5, Manhattan, recommends approval of this application; and

WHEREAS, the subject site is an irregularly shaped lot located on the northwest corner of Park Avenue and East 56<sup>th</sup> Street, with a mid-block portion that fronts on both East 56<sup>th</sup> Street and East 57<sup>th</sup> Street,

in the Special Midtown District (MID), partially within a C5-2.5 and partially within a C5-3 zoning district; and

WHEREAS, the applicant proposes to construct an 82-story mixed-use residential/ commercial building at the site; and

WHEREAS, the PCE will occupy a total of approximately 20,660 sq. ft. of floor area on portions of the first and sixth floors, and the entire seventh and ninth floors; and

WHEREAS, the PCE will be operated by the Wright Fit; and

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

WHEREAS, the hours of operation for the proposed PCE will be 6:00 a.m. to 10:00 p.m., daily; and

WHEREAS, the applicant represents that the proposed PCE meets the requirements in ZR § 81-13 for a special permit use in the Special Midtown District (MID); and

WHEREAS, specifically, the applicant states that the proposed PCE use is consistent with other retail uses within the Special Midtown District (MID) and will provide a desirable amenity to the neighborhood; and

WHEREAS, as a result, the applicant states that the subject PCE use will strengthen the business core of Midtown Manhattan by improving working and living environments and will promote a desirable use of land and building development in accordance with the District Plan for Midtown wherein the value of land is conserved and tax revenue is protected; and

WHEREAS, accordingly, the Board finds that the proposed special permit use is consistent with the purposes and provisions of ZR § 81-00; and

WHEREAS, at hearing, the Board directed the applicant to address the sound attenuation measures that will be provided in the proposed PCE; and

WHEREAS, in response, the applicant states that residential occupancy of the proposed building will begin at the 14<sup>th</sup> floor, and therefore there will be significant separation between the proposed PCE and any residential uses in the building; and

WHEREAS, the applicant also submitted revised plans reflecting that the seventh floor will provide a six-inch floating concrete floor above the ten-inch structural concrete slab, in order to provide sound attenuation for the PCE equipment located on that floor; 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

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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; 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. 12BSA064M, dated January 11, 2012; 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 located within the Special Midtown District (MID), partially within a C5-2.5 and partially within a C5-3 zoning district, the operation of a physical culture establishment on portions of the first and sixth floors and the entire sixth and ninth floors of a proposed 82-story mixed-use residential/commercial building, contrary to ZR § 32-10; *on condition* that all work shall substantially conform to drawings filed with this application marked "Received March 13, 2012"- (7) sheets, and *on further condition*:

THAT the term of this grant will expire on March

**A true copy of resolution adopted by the Board of Standards and Appeals, March 27, 2012.**

**Printed in Bulletin No. 14, Vol. 97.**

**Copies Sent**

**To Applicant**

**Fire Com'r.**

**Borough Com'r.**

27, 2022;

THAT there will 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 must be performed by New York State licensed massage therapists;

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 BSA-approved plans;

THAT sound attenuation measures will be provided as shown on the BSA-approved plans;

THAT the proposed building will be reviewed by DOB for compliance with all bulk regulations of the Zoning Resolution;

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;

THAT substantial construction be completed in accordance with ZR § 73-70; 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, March 27, 2012.

**\*The resolution has been revised to correct the part which read...portions of the first and fourth floors and the entire sixth and seventh floors... now reads...portions of the first and sixth floors and the entire seventh and ninth floors.... Corrected in Bulletin Nos. 16-18, Vol. 97, dated May 3, 2012.**