

**228-13-BZ**

**CEQR #14-BSA-016M**

APPLICANT – Herrick, Feinstein LLP by Arthur Huh, for 45 W 67th Street Development Corporation, owner; CrossFit NYC, lessee.

SUBJECT – Application August 1, 2013 – Special Permit (§73-36) to allow a physical culture establishment (*Cross Fit*) located in the cellar level of an existing 31-story building. C4-7 zoning district.

PREMISES AFFECTED – 157 Columbus Avenue, northeast corner of West 67th Street and Columbus Avenue, Block 1120, Lot 7501, Borough of Manhattan.

**COMMUNITY BOARD #7M**

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

**THE VOTE TO GRANT** –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson.....4

Negative:.....0

Absent: Commissioner Montanez .....1

**THE RESOLUTION** –

WHEREAS, the decision of the Department of Buildings (“DOB”), dated July 11, 2013, acting on DOB Application No. 121610211, reads, in pertinent part:

Proposed use of portion of the cellar as a Physical Culture Establishment (PCE) is not permitted as of right in C4-7 zoning district and is contrary to ZR Section 32-10; and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03, to permit, on a site partially within a C4-7 zoning district and partially within an R8 zoning district, the legalization of an existing physical culture establishment (“PCE”) in the cellar of a 31-story mixed residential and commercial building, contrary to ZR § 32-10; and

WHEREAS, a public hearing was held on this application November 26, 2013, after due notice by publication in the *City Record*, with continued hearings on December 17, 2013, January 28, 2014, March 11, 2014 and April 29, 2014, and then to decision on May 20, 2014; and

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

WHEREAS, Community Board 7, Manhattan, initially recommended approval of the application; however, by resolution dated February 4, 2014, Community Board 7 recommends disapproval of the application, citing the following primary concerns: (1) the accuracy and completeness of the information provided by the applicant regarding the impact of this particular type of gym and the exercises performed; (2) the lack of analysis of acoustical concerns relating to hammering, percussive, and transmitted vibrations and noise; (3) the short- and long-term impact of the gym activities upon the building structure; and (4) the adequacy of the proposed sound attenuation; and

WHEREAS, City Councilperson Helen Rosenthal recommends disapproval of the application; and

WHEREAS, Manhattan Borough President Gale Brewer submitted testimony regarding the application urging the Board to consider any potential negative impacts; and

WHEREAS, certain members of the surrounding community submitted testimony in support of the application; and

WHEREAS, certain members of the surrounding community, including residents of the subject building, submitted testimony in opposition to the application (the “Opposition”); the Opposition’s primary concerns include those raised by the Community Board as well as (1) the incompatibility of the use with the residential use in the building and in the surrounding area; (2) the transmittal of noise and vibration throughout the building; (3) whether representative weights had been used for the acoustical studies and that a weight limit be set for weight-dropping activities; (4) the inclusion of PCE use in the R8 zoning district portion of the site; (5) the extension of the use onto the sidewalk and street outside the building; (6) an increase in noise associated with competitions or other events; (7) the fact that the PCE has commenced operation prior to obtaining its special permit; (8) the operation of other Cross Fit PCEs in the City; and (9) whether proper notification of the hearing was performed and whether all submissions were properly distributed; and

WHEREAS, the Opposition states that if the special permit is granted, consideration be given to (1) a term limited to two years from the July 2013 commencement of operations; and (2) limitations on the hours of operation and the hours that weights can be dropped; and

WHEREAS, the subject site is located on the northeast corner of the intersection of Columbus Avenue and West 67th Street, partially within a C4-7 zoning district and partially within an R8 zoning district, within the Special Lincoln Square District; and

WHEREAS, the site has 100.42 feet of frontage along Columbus Avenue, 150 feet of frontage along West 67th Street, and 21,088 sq. ft. of lot area; and

WHEREAS, the site is occupied by a 31-story mixed residential and commercial building; and

WHEREAS, the PCE occupies 6,461 sq. ft. of floor space in the cellar within the C4-7 zoning district portion of the site; and

WHEREAS, the PCE will be operated as CrossFit; and

WHEREAS, the applicant represents that the services at the PCE include facilities for classes, instruction and programs for physical improvement, body building, weight reduction, and aerobics; 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 Fire Department states that it has no objection to the proposal; and

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

**228-13-BZ**  
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WHEREAS, at hearing, in response to the Opposition's concerns and based on its own observations from site visits and review of the application, the Board directed the applicant to provide additional information on the following issues: (1) whether notification and dissemination of submissions was completed in accordance with the Board's Rules; (2) whether the PCE had commenced to operate; (3) whether the PCE use was confined to the C4-7 zoning district portion of the site; (4) the conclusions of the acoustical studies and the proposal to include sound attenuation measures; (5) the proposed hours of operation and confirmation that the facility would be closed to all outside of those hours; and (6) whether events or competitions would be held on site; and

WHEREAS, as to notification, the applicant informed the Board that proper notification of the hearing had mistakenly not been performed prior to the first hearing and thus the Board continued the public hearing to a new date subsequent to the performance of proper notification; and

WHEREAS, similarly, the applicant corrected any omissions of submission transmittal to required parties in satisfaction of the Board's Rules for proof of service of submissions and supplementary materials pursuant to § 1-10.7; and

WHEREAS, as to operations, the applicant acknowledged that it had begun to phase in introductory sessions in July 2013, but only commenced PCE operations in November 2013; and

WHEREAS, as to the location of the PCE, the applicant revised its plans to reflect that no portion of the PCE will operate within the R8 portion of the site and submitted photographs of the installation of a wall between the C4-7 portion of the site and the R8 portion of the site; and

WHEREAS, as to the concerns about sound and attenuation, the applicant's acoustic consultant performed studies from the fifth-floor commercial space just below the first floor of residential use and concluded that any noise effects are well within the City's Noise Code regulations; and

WHEREAS, the Board notes that the Opposition calls the applicant's acoustical study into question and states that it has performed its own, but has not offered any evidence to refute the applicant's findings; and

WHEREAS, further, the Board notes that the residential use in the building does not begin until the sixth floor and is thus separated from the cellar PCE use by five floors of commercial use and the Board finds the applicant's acoustical study to be credible and consistent with such studies that the Board has accepted with other PCE applications; and

WHEREAS, the Board notes that the applicant initially proposed attenuation measures, such as padded fitness flooring and sound-foam panels and that its acoustic consultant determined that those attenuation measures, without the raised flooring system, establish attenuation to a degree that allows the proposal to comply with Noise Code regulations; and

WHEREAS, however, the applicant now proposes to include the padding and a raised floor system throughout the PCE space, as reflected on the revised plans; and

WHEREAS, as to the hours of operation, the applicant states that it will agree to a limit use to the hours proposed by the Board and will not allow any PCE use in the facility outside of those hours; and

WHEREAS, the applicant stated that the PCE seeks to operate from 6:00 a.m. to 10:00 p.m. every day; and

WHEREAS, the Board considered the request and the concerns of the Opposition and concluded that 6:00 a.m. to 9:30 a.m., Monday through Friday and 9:00 a.m. to 6:00 p.m., Saturday and Sunday was more appropriate hours; and

WHEREAS, as to the Opposition's concern about high intensity use including events and competitions, the applicant responded that it will not hold such activities on site; and

WHEREAS, the Board notes that the size of the PCE at approximately 6,500 sq. ft. is on the smaller side of the PCEs it has reviewed and agrees that the space does not lend itself to such use and is thus satisfied that the applicant has agreed not to hold them onsite; and

WHEREAS, in response to the Opposition's concerns regarding the potential for the PCE's operations to damage the structure of the building, the applicant provided a report from the building's structural engineer who designed the existing structural system, which concludes that the building can accommodate the proposed use; and

WHEREAS, the Board reviewed the submissions made by the building's engineer but concludes that the questions of structural integrity are properly before the Department of Buildings and notes that for the Board's purposes, the report is sufficient; and

WHEREAS, the Board notes that no reports have been introduced to the record which challenge the applicant's engineer's conclusions regarding the building's structural sufficiency; and

WHEREAS, as to the term, the Board notes that given the significant number of concerns including questions about the efficacy of the proposed sound attenuation measures and the applicant's commencement of operations and after hours use of the space, the Board deems a two-year term from the date of this grant to be appropriate; and

WHEREAS, finally, the Board notes that concerns about the use of other Cross Fit facilities in the City are not germane to the analysis for the subject site as each site has a unique set of building conditions; 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

**228-13-BZ  
CEQR #14-BSA-016M**

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 discussed in the Environmental Assessment Statement, CEQR No. 14BSA016M dated July 15, 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 issued 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 partially within a C4-7 zoning district and partially within an R8 zoning district, the legalization of an existing physical culture establishment (PCE) in the cellar of a 31-story mixed residential and commercial building, contrary to ZR § 32-10; *on condition* that all work shall substantially conform to drawings filed with this application marked "Received April 24, 2014" – Seven (7) sheets; and *on further condition*:

THAT the term of the PCE grant will expire on May 20, 2016;

THAT the PCE use is limited to the C4-7 zoning district portion of the site; the wall separating the C4-7 portion of the site from the R8 zoning district portion of the site will be maintained, as reflected on the BSA-approved plans, and no PCE use will be permitted in the R8 portion of the site;

THAT the hours of operation for the PCE will be

limited to Monday through Friday, from 6:00 a.m. to 9:30 p.m. and Saturday and Sunday from 9:00 a.m. to 6:00 p.m.;

THAT no private training or other PCE activity will be held outside of the noted hours of operation;

THAT competitions or other similarly-attended events are prohibited;

THAT sound-attenuating measures, including a raised flooring system and padded fitness flooring will be installed and maintained throughout the entire PCE space and sound-foam panels will be installed and maintained along certain walls, as reflected on the approved plans;

THAT the sound attenuation measures will be installed by November 20, 2014;

THAT the use of the facility will comply with New York City Noise Code regulations;

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

THAT any massages will be performed only by New York State licensed massage professionals;

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 the above conditions will appear on the Certificate of Occupancy;

THAT DOB will review and approve occupancy loads, including as related to equipment use;

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, May 20, 2014.

**A true copy of resolution adopted by the Board of Standards and Appeals, May 20, 2014.**

**Printed in Bulletin No. 21, Vol. 99.**

**Copies Sent**

**To Applicant**

**Fire Com'r.**

**Borough Com'r.**

